SUPREME COURT, U.S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 453.

RAY H. GARNER, HARRY BECKERMAN, AIDA BELDNER, JOHN B. BROWN, CARRIE L. DICK, MARY E. GRUNEWALD, EUGENE HALLETT, MARGARET B. HASKELL, EDWARD HAVENS, CORNELIUS LAWRENCE, VERA MANN, OLA ROSS PACIFICO, DANA PLATT, EUGENE REED, FRANCES SCHWARTZ, WILLARD SMART, FRANK TORREANO,

Petitioners,

vs.

BOARD OF PUBLIC WORKS OF THE CITY OF LOS ANGELES; CLARENCE J. DERRICK, JOSEPH O. DONOVAN, LOUIS M. DREVES, FRANK GILLELEN, EDWARD L. TAYLOR, and MILTON OFFNER, as Members of the Board of Public Works of the City of Los Angeles; BOARD OF CIVIL SERVICE COMMISSIONERS OF THE CITY OF LOS ANGELES; SAMSON A. LINDAUER, JUSTIN W. GILLETTE, CHARLES E. ARNN, RANSOM M. CALLICOTT, and MRS. IDA S. LAZARD, as Members of the Board of Civil Service Commissioners of the City of Los Angeles; DAN O. HOYE, City Controller of the City of Los Angeles; THE CITY OF LOS ANGELES, a Municipal Corporation,

Respondents.

ON CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT.

RESPONDENTS' BRIEF.

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Respondents.

ON CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT.

RESPONDENTS' BRIEF.

Opinions Below.

On March 5, 1951, this Court granted certiorari to the District Court of Appeal of the State of California, Second Appellate District. The opinion of the District Court

of Appeal is reported in 98 California Appellate Reports 2d Series, at page 493 (220 P. 2d 958), and appears in the printed record at pages 40 to 46. The decision of the District Court of Appeal affirmed the judgment of the Superior Court of the State of California in and for the County of Los Angeles. That judgment denied the issuance of an alternative writ of mandate to direct the respondents to reinstate the petitioners in positions in the service of the City of Los Angeles. The Superior Court rendered no opinion. The petition filed in the Superior Court appears in the printed record at pages 1 to 27. The respondents' opposition thereto appears in the printed record at pages 28 to 31. The order and judgment of the Superior Court appears in the printed record at pages 32 to 33.

The petitioners' request for a hearing by the Supreme Court of California was denied by that court without opinion. (98 Cal. App. 2d 493, 499, 220 P. 2d 958.) [R. 47.]

Jurisdiction.

The petitioners attempt here to raise questions under the Constitution of the United States. They sought to raise these questions before the Civil Service Commission, in the trial court, and upon appeal, by statements of mere conclusions, unsupported by any evidence offered before the Civil Service Commission or by any allegations of fact in the petition to the trial court.

That not even a doubtful question under the Constitution of the United States is presented here will be fully shown under Points I and II of the respondents' argument herein.

Questions Presented.

Preliminary Statement.

This proceeding involves considerations of political theory, government, national interest, loyalty, security and the like, and hence offers opportunities for the injection of emotionalism and for confusion of terms. Definitions, therefore, will be helpful.

We are using the word "allegiance" as comprehending (1) the tie or obligation of a citizen of the United States of America to the Constitution of the United States and to the government established by that Constitution; (2) the obligation of such a citizen to the state of which he is also a citizen, and (3) the devotion or loyalty, and the obedience and service which is implicit in such relations. (See Webster's New International Dictionary, Second Edition, Unabridged, G. & C. Merriam Company.)

All of this is obviously comprehended by the oath required of the President of the United States by Article II, Section 1 of the Constitution, and in the oaths referred to in Section 3 of the Fourteenth Amendment and required of officers of the United States and of the states by Article VI, Section 3, and is clearly included in all of the familiar oaths of like kind and effect. Clearly, any such oath includes an undertaking not to advocate, advise or teach the forcible overthrow of the governments established by the Constitutions of the United States and of the several states, and an undertaking that the citizen will not knowingly belong to or affiliate with any organization which advocates, advises or teaches such forcible revolution. These things are clear and implicit in any oath of allegiance, whether they are spelled out or not, and we shall

use the term "allegiance" and the term "oath of allegiance" upon these obvious assumptions.

With this understanding, the immediate questions presented are the following:

1. Does the discharge of a city employee, who has only such tenure as is secured by state law, present any question under the Constitution of the United States, where the separable causes of the discharge of such employee are:

(a) That he refused to take an oath of allegiance to the United States and to the State;

(b) That he refused to assert his adherence to such allegiance during the period of the past five years;

(c) That he refused to state whether or not he had been a member of certain named organizations, where the city's legislative body had determined such information to be relevant to his employment, there being not even an offer of proof that such information was wholly irrelevant?

2. Assuming that doubtful questions under the Constitution are thus presented, the following questions arise:

(a) Does the Constitution of the United States create and protect (1) a right to advise, advocate or teach the violent overthrow of the federal and state governments established and guaranteed by the Constitution; (2) a right to organize and affiliate with others for the purpose and with the effect of conducting such activities, and (3) a right at the same time to occupy a position under a state, immune from inquiry by the people of the state as to such activities?

(b) If the Constitution of the United States does not create and protect such rights, does it nevertheless create and protect a right to occupy a position under a state, even though the employee has in the immediate or recent past advised, advocated or taught the violent overthrow of the federal and state governments established and guaranteed by the Constitution?

(c) If the Constitution of the United States creates and protects no such rights, is a state nevertheless forbidden by the Constitution from inquiring of its employees concerning such matters and compelled, if it seeks to discharge an employee who engages or has recently engaged in such activities, to charge and prove such acts by evidence obtained from persons other than the employee?

(It should be remembered that the case presented is not one where the petitioners' refusal to state the facts involved automatically effected their discharge—the proposed elicitation of statements from the petitioners amounted to no more than inquiries from them under oath, and their discharges were effected after hearings and upon determinations by the city's Civil Service Commission that the petitioners' refusals constituted causes for their discharges.)

(d) Whether or not the Constitution of the United States does create and protect a right to advise, advocate, or teach the violent overthrow of the federal and state governments established and guaranteed by the Constitution, and as well a right to organize and affiliate with others for such purposes, does it, in any event, create and protect a right in citizens of the

United States to occupy positions in the service of a state or its municipal corporations without complying with an inquiry, at legislative direction, as to the employee's affiliations with the Communist Party or the Communist Political Association, where the legislative determination is that such information is relevant to the employee's service and employment, and where there is not even an offer to show that such information is wholly irrelevant?

Statutes Involved.

The case below arose out of Sections 80 and 112(a) of the Los Angeles Charter (Appendix I, p. 1, and Appendix II, p. 1) and Sections 1-8 of the City's Ordinance No. 94,004 (Appendix III, p. 3) [R. 11-13].*

The ordinance is connected with, although it does not depend upon, Section 432 of the Charter of the City of Los Angeles (Stats. of California, 1941, p. 3409), which is set forth at length herein in our statement of the case, *infra*. (Since the enactment of this ordinance, the Legislature of the State of California has required that a similar oath be taken by all public employees [Chapter 8, Div. 4, Title 1, Government Code of California, Appendix IV, p. 6].)

The relevancy of the declarations required to be made in the oath provided in Section 1 of the Ordinance is supported by the California Syndicalism and Sabotage Law (Deering Act 8428, Stats. of California, 1919, p. 281; sustained in *Whitney v. California*, 274 U. S. 357, 71 L. Ed. 1095), by the California Subversive Organization

*Referred to hereafter as "the Ordinance."

Registration Law, first enacted in 1941 and now contained in the Corporations Code of California, Sections 35000 to 35302 (Stats. of California, 1947, Chapter 1038), by Section 1028 of the Government Code of California (Appendix V, p. 10), and by Section 616 of the Military and Veterans Code of California (Appendix VI, p. 11.) The California Syndicalism and Sabotage Law is set forth at length in Appendix VII at pages 11 to 13 and Sections 35000 to 35002, portions of Section 35100, Section 35103 and Section 35302 of the Corporations Code are supplied in Appendix VIII at pages 14 to 16. The relevancy of the requirements of the oath is also supported by the provisions of Sections 2381-2385 of Title 18 of the United States Code (Appendix IX, pp. 17, 18), and by the provisions of the Internal Security Act of 1950. (Ch. 1024—Public Law 831.)

Statement of the Case.

Prior to January 6, 1949, each of the petitioners had occupied a position in the classified service of the City of Los Angeles [R. 2]. The City of Los Angeles is a municipal corporation of the State of California, organized under a freeholders' charter (Stats. of Calif., 1925, p. 1028), pursuant to Section 8 of Article XI of the Constitution of the State of California.

Under the provisions of Sections 1-8 of Ordinance No. 94,004 [Appendix III, pp. 3-6; R. 11-13], each of the City's employees was required before January 6, 1949, to take and subscribe to an oath of allegiance to the United States and to the State of California, and to file an affidavit as to whether or not he was or had ever been a member of the Communist Party of the United States of America or of the Communist Political Association.

The oath of allegiance is in the usual form, and further includes definitive asseverations denying overt advocacies and affiliations inconsistent with the primary portion of the oath [R. 11, 12]. (*Cf. Dworken v. Collopy*, 91 N. E. 2d 564, 573; *Cohen v. Wright*, 22 Cal. 293, 310.) In addition to this undertaking of present allegiance, the oath includes a declaration as to the employee's conduct during the preceding five-year period. This portion of the oath was deemed to furnish additional security to the people of the City by seeking to insure that none of their employees had been engaged within that recent period in felonious conduct forbidden by the Smith Act (United States Code, Title 18, Section 2385; Appendix IX, p. 17) and by the California Syndicalism and Sabotage Law (Deering's General Laws, Act 8428; Statutes of California, 1919, p. 281; Appendix VII, p. 11), and was further indicated by the provisions of Section 432 of the Charter of the City of Los Angeles (Statutes of California, 1941, p. 3409). That charter section provides as follows:

> "Notwithstanding any other provision of this charter, no person shall hold or retain or be eligible for any public office or employment in the service of the City of Los Angeles, in any office or department thereof, either elective or appointive, who has within five (5) years prior to the effective date of this section advised, advocated or taught, or who may, after this section becomes effective [April 28, 1941], advise, advocate or teach, or who is now or has been within five (5) years prior to the effective date of this section, or who may, after this section becomes effective, become a member of or affiliated with any group, society, association, organization or party which advises, advocates or teaches, or has, within said

period of five (5) years, advised, advocated or taught the overthrow by force or violence of the government of the United States of America or of the State of California. [Bracketed date supplied.]

"In so far as this section may be held by any court of competent jurisdiction not to be self-executing, the City Council is hereby given power and authority to adopt appropriate legislation for the purpose of effectuating the objects hereof."

Fifteen of the petitioners refused to sign either the oath or the affidavit; two of them, *Pacifico* and *Schwartz*, signed the oath but not the affidavit. Thereafter each of them was discharged for such cause by the general manager of his department [Charter of the City of Los Angeles, Sec. 80, Stats. of California, 1925, p. 1058, pertinent portions appear in the Appendix I, p. 1; R. 23].

Section 112(a) of the Charter of the City of Los Angeles (Stats. of California, 1945, page 3102, set forth at length in the Appendix II, p. 1) provides that an employee who has served his probationary period in the classified service of the City may be discharged only for a cause stated, that he is entitled upon his application to a hearing by the City's Board of Civil Service Commissioners as to the sufficiency and truth of such stated cause, and that the order of the Board after such hearing shall be final and conclusive.

Upon such application, the cause of the discharge of each petitioner was reviewed by the Board of Civil Service Commissioners in an open and public hearing. Each of the petitioners was present at his hearing, each was represented by counsel, and each was afforded every opportunity to present, and did present, evidence and

argument to the Commission [R. 5, 6, 25, 26]. After taking the matter under submission the Commission in each case entered its determination that the causes stated for the discharge were true, and that the causes stated were sufficient to sustain the discharge [R. 5, 6, 25, 26]

By their consolidated applications to the Superior Court of the State of California in and for the County of Los Angeles, the petitioners sought a writ of mandate compelling their reinstatement to the positions from which they had been discharged [R. 1-10]. This petition did not bring up the record before the Civil Service Commission, nor seek its review, but instead merely recited the facts here stated. Under California procedure (California Code of Civil Procedure, Sec. 1107) the respondents to such a petition may file their objections to the issuance of the alternative writ, and if it appears to the court therefrom that the writ should not issue, the court may refuse it (*Patterson v. Board of Supervisors of Los Angeles County*, 79 Cal. App. 2d 670, 180 P. 2d 945). The respondents here filed such objections [R. 28-32], and thereafter the court denied a writ [R. 32-33]. The effect of these proceedings and of this order under California law will be discussed hereafter.

The petitioners declined to amend their petition or to file any other proceedings, but instead took their appeal from the order described.

Since there was no answer or other pleading by the respondents in the proceeding in the Superior Court, and since there is otherwise none in the record, it cannot be said, as the petitioners claim, that there are any admissions or concessions of fact by the respondents. It is true that the allegations of fact (although not the statements of con-

clusions) in the petition, had to be taken by the Superior Court to be true except where such allegations of fact were otherwise contradicted by the record before it. But since that record, which consisted only of the petition for an alternative writ of mandate, included the ordinance and recited that hearings were held by the Civil Service Commission and that the Commission had sustained the petitioners' discharges, and since the Charter of the City is a statute of California and was therefore before the court, certain of the claims in the petition were contradicted by the provisions of the Charter, the intendments of the ordinance, the exhibits attached to the petition, and the intendments and presumptions attending the proceedings before and the determinations by the Civil Service Commission. Accordingly, contrary to certain allegations in the petition to the Superior Court, and contrary to assertions at various points in the petitioners' petition and brief, the record does not establish:

(a) That the Communist Party or the Communist Political Association is a political organization [R. 7, 8, 9, Pet. p. 16];

(b) That the petitioners were fit or suitable persons to fill the positions from which they were removed [R. 6]; or

(c) That the information sought to be elicited by the affidavits provided for in Section 4 of the ordinance [R. 12] was irrelevant to the positions held by the petitioners or to the petitioners' qualifications to hold those positions [Pet. p. 16].

On the contrary, for the purposes of the proceedings below and here, the record establishes the facts that:

(1) Neither the Communist Party nor the Communist Political Association is a political organization, but instead each of them is of such a character that membership in or affiliation with it is relevant to the City service and to the qualifications of employees of the City, and might establish the disqualification of the persons involved to remain in the City's service;

(2) The petitioners are not fit or suitable persons to fill the positions from which they were discharged. (Sec. 112(a) of the Charter of the City of Los Angeles, Appendix II, p. 1.)

Summary of Argument.

For the purposes of this proceeding the City of Los Angeles is the real respondent herein: the other respondents may be considered as being merely nominal parties The City of Los Angeles is a chartered municipal corporation of the State of California, deriving all of its powers from the people of California under the Constitution of the State of California and having exclusive power over its municipal affairs. Under California law questions concerning the employment and discharge of a city employee are municipal affairs (*Livingstone v. MacGillivary*, 1 Cal. 2d 546, 552, 36 P. 2d 622; *Pasadena v. Charleville*, 215 Cal. 384, 10 P. 2d 745; *Butterworth v. Boyd*, 12 Cal. 2d 140, 147, 82 P. 2d 434), and in such matters a chartered city exercises total power, subject only to any limitations contained in the Constitution of the State or the Constitution of the United States. Since only limitations fixed by the Constitution of the United States upon the

exercise of such power are open for discussion here, any problems presented are exactly those which would be presented had the governmental action here under attack been taken by the people of the State of California. The broad questions thus presented are whether or not the "rights" claimed by the petitioners are indeed established and secured to them by the Constitution of the United States and, if so, whether or not state action for the discharge of a public employee involves any deprivation of such rights. No questions of an exclusive oath provision under the state law or of distinctions between the duties of officers and those of employees are here presented, since those are exclusively state questions and since none of the petitioners is an officer.

The essence of the petitioners' claims is: *first*, that under the Constitution of the United States a citizen has a protected right to advise, advocate and teach the violent overthrow of the federal and state governments, and to organize and affiliate with others to effectuate such purposes, so long as he commits no other overt act to accomplish such purposes, and so long as there is not an undeniably clear and present danger of the early and successful accomplishment of such violent revolution; and *second*, that a discharge of a citizen employed by a state on the ground that he does so advise, advocate, teach or organize, or that he has done so in the recent past, deprives such citizen of the rights so guaranteed him by the Constitution of the United States.*

The respondent City of Los Angeles contends that there are no such rights under the Constitution of the United

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*As this brief goes to the printer we have not received printed copies of the petitioners' brief and thus cannot supply supporting page references for our statements about that brief.

States and in any event that questions of such kind, relating to the employment and discharge of public employees under laws of the State of California are reserved entirely to the state and that no question under the Constitution of the United States arises in that field.

The petitioners' subsidiary claims amount to this: that the state action here under attack compelled them to testify against themselves in violation of the Fifth and Fourteenth Amendments, and that it constituted a bill of attainder and an *ex post facto* law, in violation of Section 10 of Article I of the Constitution.

The reply of the respondent City to those contentions is that they are not supported by the facts of the case and in any event that they do not arise under the circumstances here presented, in a matter which concerns only the discharge of one employed under the authority of the state. The petitioners also complain that the oath provision of the ordinance is unnecessary, unwise and ineffectual, and that other means to the same purpose would be preferable. These questions are for the legislative body and in any event do not survive to this Court.[1]

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[1]The importance of maintaining the separation of powers contemplated by the Constitution is of the highest order. Since the courts are themselves the last arbiters of the limits of their own power, their care to restrict that power within the limits of the Constitution must be of the highest degree. *Fletcher v. Peck*, 6 Cranch 87, 128 (3 L. Ed. 162, 175); *Union Pacific Railroad Co. v. United States*, 99 U. S. 700 (25 L. Ed. 496); Concurring opinion of Mr. Justice Frankfurter, *American Communications Association v. Douds*, 339 U. S. 382, 416 (94 L. Ed. 925, 953). *McCray v. U. S.*, 195 U. S. 27 (49 L. Ed. 78), where the Court said, at pages 53-56:

> "Whilst, as a result of our written Constitution, it is axiomatic that the judicial department of the government is charged with the solemn duty of enforcing the Constitution, and therefore, in cases properly presented, of determining whether a given manifestation of authority has exceeded the power conferred by that instrument, no instance is afforded

The respondent City further contends that the judgment below rests in any event on purely state grounds: that there was a misjoinder and defective pleading under California law, that the decision of the Civil Service Commission was final and conclusive under state law and that the judgment of the Superior Court properly rests upon those grounds without reference to any constitutional questions which might otherwise have been involved.

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from the foundation of the government where an act which was within a power conferred, was declared to be repugnant to the Constitution, because it appeared to the judicial mind that the particular assertion of constitutional power was either unwise or unjust. To announce such a principle would amount to declaring that, in our constitutional system, the judiciary was not only charged with the duty of upholding the Constitution, but also with the responsibility of correcting every possible abuse arising from the exercise by the other departments of their conceded authority. So to hold would be to overthrow the entire distinction between the legislative, judicial, and executive departments of the government upon which our system is founded, and would be a mere act of judicial usurpation.

". . . this reduces itself to the contention that, under our constitutional system, the abuse by one department of the government of its lawful powers is to be corrected by the abuse of its powers by another department.

". . . While abuse of a power conferred may be temporarily effectual, as where the Congress may use its power unwisely or injuriously, . . . '(t)he wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints on which the people must often rely solely, in all representative governments.' "

And as the Court said in *RD-DR Corporation v. Smith*, 183 F. 2d 562, 565, 566 [Certiorari denied 340 U. S. 853 (95 L. Ed. 40)]:

" 'No matter how desirable the results might be, it is of the essence of our system that the judges must stay within the bounds of their constitutional power. Nothing is more fundamental—even the Bill of Rights. To depart from this fundamental is . . . "to frustrate the great design of a written Constitution." ' "

ARGUMENT.

POINT I.

When the Petitioners' Essential Contentions Are Analyzed and Accurately Stated They Are Seen to Be Entirely Invalid and to Fail to Raise Even a Doubtful Question Under the Constitution.

The petitioners' essential argument in the court below and before this Court is that the First Amendment to the Constitution of the United States compels the employment of employees by the states or their governmental entities without inquiry or other appropriate action to insure that such employees are not working for the forcible overthrow of the federal and state governments. The First Amendment, the petitioners say, in effect, protects advocacy of the destruction of the United States, and entirely immunizes those who organize and work for the destruction of the United States against any governmental action, until such advocacy and organization have proceeded so far and with such success that the conspiratorial movement constitutes a clear and present danger—a clear and present danger of immediate and probably successful revolution—a clear and present threat of the immediate destruction by force and violence of the existing constitutional government of the United States. Indeed the petitioners say, in effect, such protection extends even further, to the point where, under the Constitution, the people of the United States—and of California—can do nothing to prevent the progress of such a revolutionary movement until overt physical acts toward revolution are actually committed. And until such a clear and present danger threatens and until such overt acts occur, the petitioners say, the people must, without any question whatever, employ the adherents of revolution as the people's own

agents in the conduct of the people's existing constitutional government.

These contentions naturally find as little support in the Constitution or in the case law as they do in reason. The Constitution itself guarantees to the states a republican form of government (Article IV, Sec. 4). The contemporaneous meaning and purpose of this provision was expressed by Alexander Hamilton in the Federalist, No. XXI. He said there:

> "The inordinate pride of state importance has suggested to some minds an objection to the principle of a guaranty in the federal government, as involving an officious interference in the domestic concerns of the members. A scruple of this kind would deprive us of one of the principal advantages to be expected from union, and can only flow from a misapprehension of the nature of the provision itself. It could be no impediment to reforms of the state constitutions by a majority of the people in a legal and peaceful mode. This right would remain undiminished. The guaranty could only operate against changes to be effected by violence. Towards the prevention of calamities of this kind, too many checks cannot be provided. The peace of society and the stability of government depend absolutely on the efficacy of the precautions adopted on this head. Where the whole power of the government is in the hands of the people, there is the less pretense for the use of violent remedies, in partial or occasional distempers of the state. The natural cure of an ill administration, in a popular or representative constitution, is a change of men. A guaranty by the national authority would be as much leveled against the usurpations of rulers as against the ferments and outrages of faction and sedition in the community."

And since it was adopted, the First Amendment has never been held to protect either speech or activity directed at the forcible overthrow of the very government which was established by the Constitution or at the overthrow of the governments of the states which are permanently protected by that Constitution; indeed, the decisions cited by the petitioners uniformly negate their essential contention.

As the court said in *Barsky v. United States*, 167 F. 2d 241, 246 (certiorari denied, 334 U. S. 843, 92 L. Ed. 1767), officers of the government established under the Constitution have not only the power but the obligation to inquire into potential threats to the government, not only for the traditional reason that a government must protect itself, but for the basic reason that since government in this country was "established by the people as an instrumentality for the protection of the rights of (the) people, it has an obligation to its creators to preserve itself. * * *." (See also, *United States v. Josepheson*, 165 F. 2d 82 (certiorari denied, 333 U. S. 838, 92 L. Ed. 1122).)

Our argument in the main then, will be directed toward the petitioners' first essential contention, which is argued in their Point II. Their argument seeks to present the case as if other questions were involved than those we have stated and as if this were the time and the case for the court to compose detailed regulations to insure that all governmental action hereafter shall be restrained within First Amendment limitations. We shall not, however, as the petitioners invite us to do, undertake a minute examination of the limitations which might exist for the preservation of First Amendment liberties, in other cases and upon other facts, upon action by the people designed to prevent the violent overthrow of their constitutionally established

government. There is no necessity here for sighting precise boundaries, since the public action challenged here is close to the very center of the sphere of obviously justifiable action by the people in their own defense.

Statement of Premises—The Bases of Democratic Government.

The argument presented by the petitioners in their brief is so ingeniously circuitous and is based upon such unwarranted and bland assumptions and half truths that we are encouraged to begin our argument by a few references to the basic principles of government in this country.

Our discussion of our assumptions may be attacked as stating only the trite, the obvious, and the ideal. We will not resent such an attack, for truth and reason are trite and often obvious, and all too often overlooked in a welter of words which blow about and depart by the same door through which they entered.

The Government of the United States *Is* the People of the United States.

In the United States of America government is both a concept and an entity and it is immaterial for our purposes whether it is considered as the one or the other. As entities, the governments of the United States and of the states derive all of their powers from their respective peoples. They are the agents of their peoples, the mechanisms which the people have chosen to administer their political affairs, and consequently, the government of the United States *is* the people of the United States, and the government of the State of California *is* the people of California. The structure and the mechanics of govern-

ment, its several branches, and departments *are* the people, acting through the individuals selected by the people.[2]

We have chosen as instruments written constitutions which provide for the departmentalized structures of our government, and either for a limited grant of power to such government, as in the case of the Federal Government, or for limitations on general powers, in the case of the states. Because of such limitations as are contained in the Bills of Rights sections of the constitutions of the states even the majority of the people, acting through the agency of the servants of all the people, may not interfere at all in certain affairs of any of the people and may otherwise interfere only according to prescribed procedures. Similar limitations on the powers of state governments exist by virtue of Article I, Section 10, and Article IV, Section 4, of the Constitution of the United States, and by reason of the Fourteenth Amendment, which also to an extent imposes some of the limitations of the first eight Amendments upon the states, although originally their provisions were applicable only to the Federal Government (*Everson v. Board of Education*, 330 U. S. 1 [91 L. Ed. 711]). These denials of power to the United States and to the states, which we call our Bills of Rights, are the constitutional provisions under which the petitioners seek to take cover. Determination of the adequacy of those provisions to provide such protection to the petitioners must derive from a consideration of the purposes of those constitutional guaranties as well as of the other fundamental bases of our government.

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[2]So, in our argument, and in most instances in that of the petitioners', "government," "the United States" and "the government of the United States" should be read as shorthand for "the people of the United States, through their chosen agents," and "state," "the State of California," and "the City" should be read as shorthand for "the people of California, through their chosen agents."

Ultimate Power Is Constitutionally in the People

Perhaps the most complete and certainly an adequate justification for the democratic system which we have erected in the United States is that it provides a mechanism whereby changes desired by the people, whether they be advances or retreats, may be effected without revolution or bloodshed. It is implicit in such a concept that no change may ever be irrevocable, that the people may always turn back or turn aside, that shifting desires may shift decisions, that nothing can long continue without the approbation of most of the people, and that no change or reform, whether it be harmful or beneficial, may be accomplished unless the majority of the people approve. Such a concept is completely incompatible with any philosophy of revolution or forcible change, for if the people want the proposed change, revolution and force are unnecessary. On the other hand, no matter what the benefits of the proposed change, it may not be accomplished through force by a minority because the minority party would then have to assume and maintain control in order to preserve its reforms, and the democratic system would so be not only denied but destroyed. Thus, the American people have accepted the teachings of history that no government can be right unless it rests upon the consent of the people it governs, that there is no such thing as a perpetual benevolent despotism, that force will finally overthrow a government established by force against the wishes of the people, and that enduring government is conceived in peace and supported by the popular mandate.

So the reasons for a democratic system of government become at once its definition: it is that system which expresses, accomplishes, and preserves the will of the people, periodically expressed, directly or by representative elections, through a free and universal suffrage.

The People Cannot Surrender Their Power.

The preservation of the democratic system is thus one of the inescapably necessary objects of a democratic government and becomes the prime duty of such a government. This duty of a democratic government not only to preserve itself as a governmental entity, but to preserve, protect, and maintain itself as an embodiment and instrument of the democratic concept goes far beyond the historical idea that the first duty of any government is to maintain itself. The English government has essentially maintained itself as an entity for hundreds of years, but it has done so by such concessions and adaptations as would make the present system of a supreme House of Commons, democratically elected, quite unrecognizable to any English monarch of an earlier period.[3] Czarist Russia might also have maintained itself as a governmental entity and hereditary monarchy if similar concessions and adaptations had been made, resulting in final recognition by the Czars of the essential right and power of the people to govern themselves. Because of the changes wrought in England, the English crown endures. Because the Czar insisted upon maintaining his philosophy as well as his crown, he lost both, and condemned his people to further prolonged agonies before they shall finally find liberty and peace.

But a democracy, as we and other nations know it, cannot survive by renouncing its power and right. If it is to recognize any right in a minority to take control, it must at the same time deny the right of the majority to

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[3]Of course, most of those concessions were compelled by force, since the people of England were without other means to obtain them, but since even before the supremacy of the Commons was established, the use of force to establish the people's will had become unnecessary.

retain control. No such fundamental revolution can be a means to the self-preservation of a democracy; instead it can result only in its self-destruction. The struggles and revolutions of the past which have been fired by man's loftiest aspirations for freedom and liberty have been directed toward the final establishment of government through the will of the people. We have that now, imperfect perhaps in mechanics and details, but still fundamentally we have it. If there be obstacles now to the accomplishment of the people's will, they may be removed by the people in an orderly way within the machinery of the government which the people have established. If anything is now being done without the approval of the people they periodically have an opportunity to express their disapproval and to unseat such of their servants as have misinterpreted their desires.[4]

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[4] *Cf.* argument of Daniel Webster in *Luther v. Borden*, 7 How. 1 (12 L. Ed. 581), related by this Court with approval in *In re Duncan*, 139 U. S. 449, 461 (35 L. Ed. 219, 224), and in *Taylor v. Beckham*, 178 U. S. 548, 579 (44 L. Ed. 1187, 1201):

> "Mr. Webster's argument in that case took a wider sweep, and contained a masterly statement of the American system of government as recognizing that the people are the source of all political power, but that, as the exercise of governmental powers immediately by the people themselves is impracticable, they must be exercised by representatives of the people; that the basis of representation is suffrage; that the right of suffrage must be protected and its exercise prescribed by previous law, and the results ascertained by some certain rule; that through its regulated exercise each man's power tells in the Constitution of the government and in the enactment of laws; that the people limit themselves in regard to the qualifications of electors and the qualifications of the elected, and to certain forms for the conduct of elections; that our liberty is the liberty secured by the regular action of popular power, taking place and ascertained in accordance with legal and authentic modes; and that the Constitution and laws do not proceed on the ground of revolution or any right of revolution, but on the idea of results achieved by orderly action under the authority of existing governments, proceedings outside of which are not contemplated by our institutions."

Revolution Is Not Political Activity.

This registration of the people's will through which changes are effected or public servants are selected or unseated is accomplished by means of what is sometimes called the political process. The word "political" is defined in Merriam Webster Dictionary as, "Of or pertaining to the exercise of the rights and privileges or the influence by which the individuals of a state seek to determine or control its public policy; having to do with the organization or action of individuals, parties, or interests that seek to control the appointment or action of those who manage the affairs of state." The same authority defines "politics" as "The science and art of government; the science dealing with the organization, regulation, and administration of a state, in both its internal and external affairs; political science . . . . The theory or practice of managing or directing the affairs of public policy or of political parties; hence, political affairs, principles, convictions, opinions, sympathies, or the like . . ." Advocacy of the overthrow of the government by force or violence is not an activity which can be characterized as "political." "On the contrary," asserted the Supreme Court of California in *Lockheed Aircraft Corporation v. Superior Court,* 28 Cal. 2d 481, 485, 171 P. 2d 21, "the words 'politics' and 'political' imply orderly conduct of government, not revolution." Hence, a statute prohibiting interference by employers with political activities or affiliations of employees affords no protection to an employee advocating the overthrow of the government by force or affiliating with a group or organization advocating such overthrow (*supra*). A political party in the United States, therefore, is an organization which is formed and which exists as a device for carrying on political activities in the

manner above defined, and an organization which seeks to accomplish the forcible overthrow of government does not, by calling itself a political party, become such.

Constitutional Rights Are Established for the Preservation of the Democratic System.

Some of our constitutional provisions establish structural devices which are deemed fundamental and essential to the democratic system—universal suffrage, the independent judiciary and periodic elections. Other provisions which take the form in the United States of constitutional limitations upon the authority of even the majority of the people are deemed similarly fundamental and essential—freedom of speech and of the press, separation of church and state, the right to assemble and petition. These rights are inseparable from the American democratic concept. The people cannot govern unless they are informed, nor unless they can express themselves, nor if loyalty to a church is to be confused with loyalty to the country. These rights cannot be struck down without at the same time striking down democracy itself. Thus they stand more firmly and unalterably as constitutional rights than do other provisions of nominally equal stature.

At the same time their origin and essential reason for being must be recognized if they are to be interpreted and administered as enduring rights. Free speech means freedom to criticize, freedom to express even palpably erroneous opinion, freedom to proselyte even for abhorrent causes, but it cannot mean freedom to advise, to advocate or to conspire for the destruction of democratic government itself.

As the court said in *People v. Cox*, 66 Cal. App. 287, 290, 226 Pac. 14, 15, with respect to the claim that the First Amendment protects the advocacy of revolution:

> "Free speech and licence are not convertible terms. One may freely state his reasons why a change of government is desirable, but he has no license by reason thereof to advocate the destruction of or to take steps to incite others to destroy the property or imperil the lives of those who do not agree to such changes. One method is lawful, the other is not, because it strikes at the basis of all government and denies the right of self-preservation. This does not presuppose the continuance of the existing order, but it does presuppose that the existing order, condition, and structure of society shall be changed only by peaceable means and that violence and destruction have no place in human government."[5]

Yet, it is upon the proposition that the First Amendment protects the advocacy of violent revolution that the petitioners must rest their case. In the District Court of Appeal they frankly said, "The crux of the matter here is whether the idea of forcible overthrow of government may be proscribed by government." (App. Op. Br. p. 24). Even this frank statement does not clearly and precisely define the issue, for it confuses transitive advocacy with intransitive cogitation or belief: what the petitioners really are saying is that "the crux of the matter here is whether the advocacy of the forcible overthrow of the existing government of the United States must be protected by that government and by California as an established right under the First Amendment, even

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[5] *Cf. People v. Lloyd*, 394 Ill. 23, 136 N. E. 505, 513.

as against efforts of the people of the City of Los Angeles to bar adherents of revolution from their employ."

We accept and welcome the petitioners' challenge and deny that there is or can be a "right" to advocate the forcible overthrow of the government of the United States, and we propose to rest our argument in the main upon that issue.

POINT II.

The Decisions of This Court Establish the Proposition That the Constitution Does Not Create or Protect Any Claimed Right to Advise, Advocate or Teach the Forcible Overthrow of the Governments of the United States or of the Several States.

The petitioners' essential argument here amounts to this:

It is an inherent natural right that a few who conceive that they know better than the people what is good for the people may by force overthrow the government of the United States and substitute another which will promote the general welfare as those few see it. Consequently, and *a fortiori*, one may advocate the overthrow of the government of the United States by force and violence.

The decisions of this Court directly reject such claims. In *Schenck v. United States*, 249 U. S. 47 (63 L. Ed. 470), this Court, speaking through Mr. Justice Holmes, approved the imposition of criminal sanctions on the accused, not for the larger offense of overt advocacy of forcible revolution, but for the lesser offense of advocating disobedience and obstruction of the draft, and in *Frohwerk v. United States*, 249 U. S. 204 (63 L. Ed. 561), *Debs v. United States*, 249 U. S. 211 (63 L. Ed. 566), *Abrams*

v. United States, 250 U. S. 616 (63 L. Ed. 1173), and *Schaefer v. United States*, 251 U. S. 466 (64 L. Ed. 360), similar conclusions were reached.

Gitlow v. New York, 268 U. S. 652, 669 (69 L. Ed. 1138, 1147), directly presented the problem of whether or not penal sanctions might be imposed upon one who advocated the violent destruction of organized parliamentary government. This Court sustained the conviction, saying:

> "That utterances inciting to the overthrow of organized government by unlawful means present a sufficient danger of substantive evil to bring their punishment within the range of legislative discretion is clear. Such utterances, by their very nature, involve danger to the public peace and to the security of the state. They threaten breaches of the peace and ultimate revolution. And the immediate danger is none the less real and substantial because the effect of a given utterance cannot be accurately foreseen. . . . A single revolutionary spark may kindle a fire that, smoldering for a time, may burst into a sweeping and destructive conflagration."

And this Court also there pointed out that "advocacy" is not mere thought or belief, but that it constitutes active espousal.

Gitlow has not been disapproved in any subsequent opinion of this Court.

In *Whitney v. California*, 274 U. S. 357, 371 (71 L. Ed. 1095, 1105), a similar conclusion was reached and this Court also pointed out with respect to the advocacy of violent revolution by an organization, that such "united and joint action involves even greater danger to the public peace and welfare than the isolated utterances and acts of individuals . . ."

As against the contentions that the Constitution provides immunity against punishment for such activity unless clear and present danger appears, *Gitlow* and *Whitney* established the propositions *first*, that there is no such immunity in any event, and *second*, that clear and present danger was established by the intendments of the penal legislation involved in those cases.

In *Stromberg v. California*, 283 U. S. 359, 368, 369 (75 L. Ed. 1117, 1123), the conviction was reversed because of the vagueness of part of the statute, and because the jury's single verdict might have been based upon its finding on that part of the statute alone. This Court said, however:

> "There is no question but that the state may thus provide for the punishment of those who indulge in utterances which incite to violence and crime and threaten the overthrow of organized government by unlawful means. There is no constitutional immunity for such conduct abhorrent to our institutions,"

citing *Gitlow* and *Whitney*.

And in *Near v. Minnesota*, 283 U. S. 697, 716 (75 L. Ed. 1357, 1367), the question presented was the validity of previous restraints upon the publication of malicious, scandalous and defamatory periodicals. This Court held that the use of the injunctive process in such cases violates the First Amendment, but pointed out that the First Amendment does not forbid all previous restraints upon publication and that the injunctive process may be used to

prevent publications inciting to acts of violence and the overthrow by force or orderly government, since—

> "The security of the community life may be protected against incitements to acts of violence and the overthrow by force of orderly government. The constitutional guaranty of free speech does not 'protect a man from an injunction against uttering words that may have all the effect of force'."

As the Court said in *United States v. Dennis,* 183 F. 2d 201, at page 213:

> "The advocacy of violence may, or may not, fail; but in neither case can there be any 'right' to use it. Revolutions are often 'right,' but a 'right of revolution' is a contradiction in terms, for a society which acknowledged it could not stop at tolerating conspiracies to overthrow it, but must include their execution."

And as Judge Chase said in his concurring opinion (pp. 236-7):

> "The only answer to the rule of the Gitlow case is, I believe, that individuals have a constitutional right to revolt. Of this, the Constitution contains its own refutation. The preamble; Article 1, Sec. 8; Article III, Sec. 3; Article IV, Sec. 4. History confirms this also. One need only to refer to the so-called 'Whiskey Rebellion' and the secession of the Confederate States."[6]

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[6]See also the concurring and dissenting opinion of Mr. Justice Jackson in *American Communications Association v. Douds,* 339 U. S. 382, 422-445 (94 L. Ed. 925, 956-968), and especially footnotes 5, 12 and 13.

POINT III.

The Petitioners' Discharge for Their Refusal as Employees Under the State to Obey the Legislative Directive Here Involved Violated No Liberties Secured by the Constitution and Was Not Forbidden Thereby.

Since the First Amendment does not establish or protect the rights or immunity claimed by the petitioners, their discharge was not affected by the Constitution of the United States, and consequently any questions arising therefrom were purely state questions. In view of this Court's consistent determination to draw its decisions upon constitutional questions as narrowly as possible, and to draw them only in the context of the particular case before the court (*Sweatt v. Painter*, 339 U. S. 629 (94 L. Ed. 1114)), it becomes appropriate now to consider the narrower question here presented: whether or not a state is forbidden by any provision of the Federal Constitution to ask of its employees such undertakings as were asked here and to discharge such employees as refuse to comply.

The problem must be reviewed in the light of the principle stated by this Court in *Kotch v. River Port Pilot Commissioners*, 330 U. S. 552 (91 L. Ed. 1093), that an important factor in such a case is that it tests the right and power of a state to select its own agents and officers.

As this Court said in *Taylor v. Beckham*, 178 U. S. 548 at 570-571 (44 L. Ed. 1187, 1198), with respect to the claims of the plaintiffs in error that their ouster from elective state offices raised questions under the Constitution:

> "It is obviously essential to the independence of the states, and to their peace and tranquility, that their power to prescribe the qualifications of their own

officers, the tenure of their offices, the manner of their election, and the grounds on which, the tribunals before which, and the mode in which, such elections may be contested, should be exclusive and free from external interference, except so far as plainly provided by the Constitution of the United States.

"And where controversies over the election of state officers have reached the state courts in the manner provided by, and been there determined in accordance with, the state Constitutions and laws, the cases must necessarily be rare in which the interference of this court can properly be invoked."

(Other language of this Court in *Taylor v. Beckham*, 178 U. S. 548 at 578 (44 L. Ed. 1187, 1201), disposes of the petitioners' obscure contention here that the state action under attack violates Article IV, Sec. 4, of the Constitution: "It was long ago settled that the enforcement of this guaranty belonged to the political department.")

And in *Wilson v, North Carolina*, 169 U. S. 586 (42 L. Ed. 865), which concerned the Governor's suspension of a state officer, this Court said:

"What kind and how much of a hearing the officer should have before suspension by the governor was a matter for the state legislature to determine, having regard to the Constitution of the state. The procedure provided by a valid state law for the purpose of changing the incumbent of a state office will not, in general, involve any question for review by this court. A law of that kind does but provide for the carrying out and enforcement of the policy of the state with reference to its political and internal administration, and a decision of the state court in regard to its construction and validity will generally

be conclusive here. The facts would have to be most rare and exceptional which would give rise, in a case of this nature, to a Federal question . . . . In its internal administration the state (so far as concerns the Federal government) has entire freedom of choice as to the creation of an office for purely state purposes, and of the terms upon which it shall be held by the persons filling the office. And in such matters the decision of the state court, that the procedure by which an officer has been suspended or removed from office was regular and was under a constitutional and valid statute, must generally be conclusive in this court. . . . Upon the case made by the plaintiff in error, the Federal question which he attempts to raise is so unfounded in substance that we are justified in saying that it does not really exist; that there is no fair color for claiming that his rights under the Federal Constitution have been violated, either by depriving him of his property without due process of law, or by denying him the equal protection of the laws."

Similar conclusions were reached by this Court in *Snowden v. Hughes*, 321 U. S. 1 (88 L. Ed. 497, 505), where it was further said (page 12):

"And it is not without significance that we are not cited to and have been unable to find a single instance in which this Court has entertained the notion that an unlawful denial by state authority of the right to state office is without more a denial of any right secured by the Fourteenth Amendment."

The specific problem presented here must also be considered in conjunction with the following well-established principles:

(1) This Court Will Not Strike Down State Action Unless Such Exercise of Authority by the People of the State Is Clearly Forbidden by the Constitution.

Bute v. Illinois, 333 U. S. 640, 653 (92 L. Ed. 988, 993);

Whitney v. California, 274 U. S. 357 (71 L. Ed. 1095);

Mugler v. Kansas, 123 U. S. 623, 661 (31 L. Ed. 205);

Graves v. Minnesota, 272 U. S. 425, 428 (71 L. Ed. 331).

It has been suggested that the principle: that the statute "comes encased in the armor wrought by prior legislative determination" does not apply where state action impinges upon First Amendment liberties.[7]

We respectfully urge that the nature of the case offers no reason for the abandonment of this principle: that the question is always the same—does the Constitution forbid the state action involved. To say that the state action will not stand where it impinges upon First Amendment liberties is simply to answer the very question at issue, for if the state action does impinge upon First Amendment liberties, it is forbidden by the Constitution, or if it is lawful action, then it does not restrict any constitutional liberty.

As we see it, there can be no such thing as a lawful restriction of any constitutional right, no such thing as an

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[7] *Bridges v. California,* 314 U. S. 252, 261 (86 L. Ed. 192, 202); *Thomas v. Collins,* 323 U. S. 516, 529, 530 (89 L. Ed. 430). But see *American Communications Association v. Douds,* 339 U. S. 382 (94 L. Ed. 925), and the opinion of Mr. Justice Frankfurter concurring, in *Kovacs v. Cooper,* 336 U. S. 77 (93 L. Ed. 513).

infringement of constitutional liberties, no such thing as a limitation upon the exercise of constitutional liberties. Constitutional rights are not absolute or definable, but it does not follow that they are either expansible or limitable. The question is sometimes to determine whether particular action by the citizen, under the particular circumstances presented, constitutes an exercise by the citizen of some constitutional right—if it does, the state may not prevent such action by previous restraint, nor punish the exercise of such right by penal action. In other cases the question is not precisely whether or not the citizen has a constitutional right to do the thing in question, but rather whether or not particular state action concerning it is forbidden by the Constitution.

Thus, it would be a contradiction in terms to say that the Constitution created and protected a right in Near (*Near v. Minn.*, 283 U. S. 697 (75 L. Ed. 1357)), to publish a scandalous and defamatory newspaper: rather the Constitution requires an immunity in such matters against previous restraint by the state, but leaves the state free to punish the act after its commission. In our view it is inaccurate in such a case to say that the scandalmonger has abused his right of free speech; there is no *right* to publish obscene or libelous matter, but in order to protect the exercise of genuine rights of free speech, the Constitution stays the hand of the state in such cases until after the offense is committed.

So also it is not precisely true that Terminiello (*Terminiello v. Chicago*, 337 U. S. 1 (93 L. Ed. 1131), was exercising any constitutional right when he incited one group to immediate violence against another. Rather, under this Court's decision there, he was clothed with an immunity against the imposition of sanction for his

utterance, since any violence threatened was local and limited, since his speech was not directed toward the forcible overthrow of the existing constitutional government, and since it was not otherwise made to appear that his utterances created a clear and present danger of substantial evils.[8]

(2) Legislation Comes to This Court "Encased in the Armor Wrought by Prior Legislative Determination." All Possible Intendments Support the Legislation and in Its Support It Will Be Presumed That the Legislature Found the Existence of Any and Every Fact Which Might Be Necessary to Exist in Order to Support the Necessity and Propriety of the Statute.

Graves v. Minnesota, 272 U. S. 425, 428 (71 L. Ed. 331, 335);

Carolene Products Company v. United States, 323 U. S. 18 (89 L. Ed. 15);

Mugler v. Kansas, 123 U. S. 623, 661 (31 L. Ed. 205, 210);

O'Gorman & Young v. Hartford Fire Ins. Co., 282 U. S. 251, 257 (75 L. Ed. 324, 327).[9]

This does not mean, of course, that these presumptions as to facts are forever binding or that they may not be disputed or disproved by proper attack, nor that in subsequent applications of the statute persons concerned may not dispute or disprove them, but it does mean that the burden in the case before this Court was upon the peti-

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[8]*Cf. American Communications Association v. Douds,* 339 U. S. 382 (94 L. Ed. 925).

tioners to prove before the Civil Service Commission such facts as would have negated those presumptions.

(3) This Court Is Not Concerned With the Wisdom of the Legislation Before It, and May Not Substitute Its Judgment for That of the Legislature.

American Communications Association v. Douds, 339 U. S. 382, 400-1 (94 L. Ed. 925);

U. S. v. Carolene Products Co., 304 U. S. 144, 154 (82 L. Ed. 1234);

Broadwax v. Missouri, 219 U. S. 285 (55 L. Ed. 219);

L'Hote v. New Orleans, 177 U. S. 587 (44 L. Ed. 899);

11 Am. Jur. 804, Constitutional Law, Sec. 138, U. S. Supreme Court cases collected in Note 10.

(4) There Is No Property Right in Public Employment; a Public Employe Has No Proprietary Interest in His Position and the Requirements of Due Process Therefore Have No Application in a Controversy Between a State and Its Employees Which Arises Solely Out of Such Statutory Employment Relationship.

There can be no valid contention either that the petitioners have been deprived of any property right without due process of law, in violation of the Fourteenth Amendment,

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[9] "As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute. It does not appear upon the face of the statute, or from any facts of which the court must take judicial notice, that in New Jersey evils did not exist in the business of fire insurance for which this statutory provision was an appropriate remedy. The action of the Legislature and of the highest court of the state indicates that such evils did exist. The record is barren of any allegation of fact tending to show unreasonableness." (Brandeis, J., at pp. 257-8.)

or that there has been any impairment of contract rights within the meaning of the contract clause (Article I, Section 10).

The courts of California have uniformly held that there is no property right in public employment. In *Risley v. Board of Civil Service Commissioners*, 60 Cal. App. 2d 32 (140 P. 2d 167), which involved the very provisions of the Charter of the City of Los Angeles under which the petitioners were employed, the court made the following statement (at page 37) in response to the argument that the plaintiffs' vested rights in their employment were infringed by a Charter amendment:

> "That they have rights, by virtue of the provisions of the Charter, which the courts will protect against unauthorized infringement by the City or any of its legislative or executive officers or boards, is undoubtedly true * * * But that these rights are vested, contractual rights, protected by the state and federal constitutional provisions forbidding the impairment of contracts and the taking of 'property' without due process, so that they cannot be changed, is not true. The rights to which plaintiffs would cling are created by or under the provisions of the Charter and are dependent upon those provisions. They may all be lost by the repeal of the provisions or modified by an amendment to the provisions, at the will of those who determine what the Charter's terms shall be."

And in *Boyd v. Pendegast*; 57 Cal. App. 504 (207 Pac. 713), which arose under similar provisions of an earlier Charter of the City of Los Angeles, the court said at pages 506-507:

> "The possession of an office, or of employment with the government, or under any of its agencies, does not

> confer a vested property right of any quality whatsoever . . . In general, then, it follows necessarily that under whatever procedure is adopted to work the removal of a person from office, the constitutional question as to lack of due process of law, cannot be involved."[10]

Although this court is not necessarily bound by the decision of a state court as to whether or not a state statute creates contract or property rights which are entitled to protection under the Constitution, nevertheless this court accepts the state courts' construction unless it is palpably erroneous. (*Phelps v. Board of Education*, 300 U. S. 319, 322 (81 L. Ed. 674, 677).)

And in a number of decisions involving state offices or positions this Court has held that there is no property right in a public position (*e. g., Taylor v. Beckham*, 178 U. S. 548 (44 L. Ed. 1187), and *Ex parte Sawyer*, 124 U. S. 200 (31 L. Ed. 402)) and that there is no contract right in such matters within the protection of the contract clause. (*e. g., Dodge v. Board of Education*, 302 U. S. 74 (82 L. Ed. 57); *Phelps v. Board of Education*, *supra*, 300 U. S. 319 (81 L. Ed. 674); *Butler v. Pa.*, 10 How. 402 (13 L. Ed. 472).)[11]

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[10]See also: *Butterworth v. Boyd*, 12 Cal. 2d 140, 150 (82 P. 2d 434); *In re Matter of Carter*, 141 Cal. 316, 319 (74 Pac. 997); *Boutwell v. State Board of Equalization*, 94 Cal. App. 2d 945 (212 P. 2d 220); *Nider v. City Commission*, 36 Cal. App. 2d 14, 30 (97 P. 2d 293); *Ludolph v. Board of Police Commissioners*, 30 Cal. App. 2d 211, 216 (86 P. 2d 118); *French v. Senate*, 146 Cal. 604 (80 Pac. 1031).

[11]See, for similar holdings as to federal positions: *United Public Workers v. Mitchell*, 330 U. S. 75 (91 L. Ed. 754); *Bailey v. Richardson*, 182 F. 2d 466; *Carter v. Forrestal*, 175 F. 2d 364.

(5) In Matters Involving the Exercise of Executive Discretion in Administrative Affairs of Government, as in the Field of Personnel Administration, the Courts Will Not Interfere, Particularly When a Statute Declares an Administrative Determination to Be Final and Conclusive.

This Court has long recognized that in matters involving the internal administration of the executive branch of the government the determinations of an administrative officer or board in the exercise of his or its discretion should be immune from judicial control except where the constitution or a statute otherwise expressly provides. (*Decatur v. Paulding*, 14 Pet. 497, 516 (10 L. Ed. 559, 568).) This is true even where executive duties "require an interpretation of the law." (*United States ex rel Dunlap v. Black*, 128 U. S. 40, 48 (32 L. Ed. 354, 357); *Perkins v. Lukens Steel Co.*, 310 U. S. 113, 127, 128, 131, 132 (84 L. Ed. 1108, 1115, 1117).)

In numerous cases involving the discharge of public employees for cause this Court and other courts have held that the administrative determination by the employing agency of what constitutes cause for removal will not be judicially reviewed. (*Eberlein v. United States*, 257 U. S. 82 (66 L. Ed. 140); *Keim v. United States*, 177 U. S. 290 (44 L. Ed. 774); *Carter v. Forrestal*, 175 F. 2d 364 (certiorari denied in 338 U. S. 832, 94 L. Ed. 507); *Levine v. Farley*, 107 F. 2d 186 (certiorari denied in 308 U. S. 622, 84 L. Ed. 519); *Souder v. Philadelphia*, 305 Pa. 1 (156 Atl. 245, 77 A. L. R. 610); *State ex rel Beebe v. City of Seattle*, 159 Wash. 392 (293 Pac. 459).)

In *Bailey v. Richardson*, 182 F. 2d 46, at page 62 (cert. granted 339 U. S. 977, 94 L. Ed. 1382), the court observed that the judiciary cannot assume responsibility for the sufficiency of the qualifications of executive employees

without assuming corresponding responsibility for the conduct of executive affairs. "It is inescapable," the Court said, "from the Constitution's separation of powers that the qualification and disqualification of executive employees is for executive determination." And in *Friedman v. Schwellenbach,* 159 F. 2d 22 (certiorari denied in 330 U. S. 838, 91 L. Ed. 1285), the same conclusion was reached, the Court noting at page 25 that more than one hundred years ago the Supreme Court in *Decatur v. Paulding*, 14 Pet. 497 (10 L. Ed. 559), had said that for the courts to interfere with the performance of the ordinary duties of the executive department of the government "would be productive of nothing but mischief."

The petitioners in this case were discharged for cause under the provisions of Section 112(a) of the Charter of the City of Los Angeles (Appendix II, p. 1), which requires the Civil Service Commission, upon the timely request of a discharged employee, to review the grounds for his removal and which specifically makes the order of the Commission with respect to such removal "final and conclusive." The courts of California have several times had occasion to determine the effect of this charter language, as well as provisions in the charters of other cities of the state making such orders final and conclusive. For example, in *Boyd v. Pendegast,* 57 Cal. App. 504, 507 (207 Pac. 713), the court said, with respect to judicial review under a section of the Los Angeles Charter identical with present Section 112(a):

> "Whether for cause or without cause, where the removal of an officer is accomplished after full compliance with existing regulations affecting the matter, no ground is left upon which to found any action against the removing power."

And in *McGinn v. Board of Health*, 113 Cal. App. 228, 231 (298 Pac. 118), the court, after noting that the appellant, a discharged employee of the City of San Francisco, had taken an appeal to the Civil Service Commission under a charter section which provided that the order of the Commission should be final, stated:

> ". . . Under the above provision of the charter, where the procedure outlined has been substantially followed, such decision is final regardless of any defect or deficiency in the evidence and is placed beyond review by the courts."

The New York Court of Appeals, in *Levitch v. Board of Education*, 243 N. Y. 373 (153 N. E. 495), likewise ruled that a discharged teacher was barred from resorting to the courts where she had appealed to the Commissioner of Education under Section 890 of the Education Law, which provided that his decision should be final and conclusive. This meant not only that his action was not reviewable in court on the facts, but also that it could not be reviewed for alleged errors in law. Referring to the Commissioner's jurisdiction the court said:

> ". . . The fact that the question may have involved the construction or application of a statute did not deprive him of jurisdiction. *Barringer v. Powell*, 230 N. Y. 37, 128 N. E. 910."

The application of the two principles last stated to such a case as this may be otherwise expressed in the idea that the courts have no jurisdiction by mandamus to compel the reinstatement of an employee unless there is a clear statutory right to the position.

Thus, since here the city is under no plain statutory duty, nor any duty to employ persons whose discharges from the City's service have been sustained by the City's Civil Service Commission, under the same statute which governed their employment and provided for their retention, the trial court properly denied even an alternative writ of mandate.

Our further discussion of the narrow question presented, in the light of the foregoing principles, separates itself into considerations of three separate phases of the ordinance:

(a) The portions of the oath which are prospective in their operation.

(b) The portions of the oath which cover the period of five years just preceding, and

(c) The affidavit requirement of the ordinance.

A. THE CONSTITUTION DOES NOT FORBID A REQUIREMENT BY THE PEOPLE OF A STATE THAT THEIR EMPLOYEES PROMISE ALLEGIANCE TO THE UNITED STATES AND TO THE STATE.

This proposition has never been questioned, so far as we can find, by any decision of this Court or by any verdict of history, and we doubt that it has ever been questioned by a citizen of this country before the generation of the activities which presumably impelled such legislative action as is presented here, and in other cases pending before this Court, such as *Dennis v. United States* (183 F. 2d 201), No. 336; *Bailey v. Richardson* (182 F. 2d 466), No. 766, and *Thompson v. Wallin* (301 N. Y. 476, 95 N. E. 2d

806), No. 599, and as was presented in *Gerende v. Board* (..... Md. ..... Atl. 2d .....), No. 577, just decided.[12]

The Constitution prescribes the oath to be taken by the President (Article II, Section 1) and requires that an oath of allegiance be taken by the members of Congress, the members of the State Legislatures, and all executive and judicial officers, both of the United State and of the several states. (Article VI, Section 3.) The Fourteenth Amendment, out of which the petitioners attempt to torture a prohibition against the oath involved here, itself provides for the perpetual disqualification of any officer who has violated an oath of allegiance by engaging in insurrection or rebellion or by other commission of treason (Fourteenth Amendment, Sec. 3), and the preamble to the Constitution, and the whole scope, purpose and meaning of the Constitution establish the fallacy of the idea that the states must employ those who lack allegiance or that the states may not require an affirmation of allegiance from their officers and employees. The constitutional Bill of Rights is not a suicide pact (dissenting opinion of Mr. Justice Jackson, *Terminiello v. Chicago*, 337 U. S. 1, 37 (93 L. Ed. 1131, 1151)), and "the constitution was adopted to preserve our government, not to serve as a protecting screen for those who, while claiming its privileges, seek to destroy it."

[12] *Cf.* Concurring and dissenting opinion of Mr. Justice Jackson in *American Communications Association v. Douds*, 339 U. S. 382 (94 L. Ed. 925), and the authorities and references there cited; and see the House Report on HR 9490, Vol. 2, U. S. Code Congressional Service, 81st Congress, 2nd Session, 1950, p. 3886. *Cf.* also, the opinion of this Court and the dissenting opinion of Mr. Chief Justice Stone, in *Schneiderman v. U. S.*, 320 U. S. 118 (87 L. Ed. 1796).

(*U. S. ex rel. Milwaukee Social Democratic Club v. Burleson*, 255 U. S. 407, 414 (65 L. Ed. 704, 710.)[18]

[18]For a short discussion of the historic value and meaning of oaths of allegiance see the opinion of Chief Justice Vanderbilt of the Supreme Court of New Jersey in *Imbrie v. Marsh*, 3 N. J. 578, 71 A. 2d 352, at pages 353 to 354.

The general conception of the value and validity of an oath of allegiance is recognized in the Constitution, as is the idea of the value of citizenship in public officers. This idea is oft expressed in the constitutions and statutes of California and of the other states and is but a limited expression of the larger principle, implicit in the nature of government, that the officers and employees of government—the agents by whom the will of the people must necessarily be executed—must, for the effective execution of their public tasks and the preservation of the government itself, be identified with the government and with the people from whom its power flows.

Citizenship as such, perhaps, is in a sense a negative condition—the condition of not being under any lawful allegiance to a foreign power. In the larger sense of citizenship as being a positive condition of affirmative loyalty to the nation, additional protection to the public interest is found in citizenship requirements for public service.

The Constitution by which the people of the United States agree to unite for their government, for their common defense, and for the promotion of the general welfare, does not require that they be so naive as to look no further than record citizenship to determine the most essential requisite of their officers and servants. Recognition of the additional security of a formal oath is found in the constitutional requirement that the President himself shall swear to preserve, protect, and defend the Constitution of the United States (Art. II, Sec. 8), but whether or not the requirement of an oath of allegiance is a salutary or sufficient device to secure the loyalty that such an oath affirms is not the question here. The choice of methods in such cases is for the people themselves through their legislative representatives. Here the people of the City of Los Angeles have solemnly decided that a formal affirmation of loyalty by their servants will tend to instill or preserve such loyalty and that such requirement may discover some of those who lack the required devotion to the common good. Whether that decision by the people of the City of Los Angeles was either wise or necessary is not a subject for debate here—the proper forum for that purpose was the Council chamber, when the ordinance in question was under consideration (*Lockheed Aircraft Corp. v. Superior Court*, 28 Cal. 2d 481, at 486 (171 P. 2d 21).)

In this proceeding we are concerned not with matters of wisdom, but with questions of power. (*Canteline v. McClellan*, 282 N. Y.

B. THE CONSTITUTION DOES NOT FORBID A REQUIREMENT BY THE PEOPLE OF A STATE THAT THEIR EMPLOYEES ASSERT THEIR ALLEGIANCE DURING THE PERIOD OF THE PAST FIVE YEARS.[14]

Since the First Amendment does not establish or protect any right to advocate forcible revolution, and since a state

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166 (25 N. E. 2d 972).) We think that the case states its own answer. The soundness of the proposition stated in our Point III-A becomes more apparent if we state its opposite, which is the petitioners' essential contention: that the people of the City of Los Angeles (and, of course, upon the same argument the people of the State of California and of the United States) may not inquire of the loyalty of their servants except where the Constitution itself expressly requires that an oath be taken by a particular officer; they must choose their servants according to tests only of their physical health and their technical knowledge and competency, and they may discharge them only for their loss of those qualities or for their breach of some penal statute. Perhaps even the petitioners would concede that employees may be discharged for observable insolence to the general public, but they nevertheless still deny the right of the public to inquire as to whether or not the employee proposes, when the day comes, to flout its wishes and to establish by force another or even an alien government.

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[14]In our statement of this point we specify a period of five years because that is the period involved in the ordinance oath presented here, but by doing so we do not mean to concede that California might not inquire over a longer period, nor that California might not require from its employees a record of allegiance, continuous and unbroken, from the time in each case that the duty of allegiance arose. Here, the petitioners alleged citizenship in their petition to the Superior Court [R. 1]. This allegation was necessary to the initial statement of their claims, since they would not have been lawfully employed in the service of the City if they were not citizens of the United States. (Charter of the City of Los Angeles, Sec. 103 [Stats. 1935, p. 2340]; California Labor Code, Sec. 1941.) Although not all of them had been employed by the City for five years before December 5, 1948, the effective date of the ordinance [R. 2, 18], it must be presumed, at least in support of the state action here, and in any event in the absence of any showing to the contrary before the Civil Service Commission or any allegations to the contrary in their petition to the Superior Court, that all had been citizens of the United States during that five-year period. It follows that all had been under a natural duty of allegiance during that period.

may require of its employees an oath of future allegiance, the only question which arises here is whether or not this retrospective feature of the ordinance constitutes a bill of attainder or an *ex post facto* law within the meaning of Article I, Section 10 of the Constitution. The petitioners assert that it does, relying partly upon *Cummings v. Missouri*, 4 Wall. 277 (18 L. Ed. 356), *Ex parte Garland*, 4 Wall. 333 (18 L. Ed. 366) and *United States v. Lovett*, 328 U. S. 303 (90 L. Ed. 1252), but primarily upon their hope that this Court will now carve out a new rule that the states may not inquire into their employees' allegiance at any time in the past.

An examination of the questions sought to be presented requires some further analysis of the provisions of the ordinance and of the facts of the case, particularly since, as pointed out in our statement of the case some of those facts are not as they are claimed to be in the petitioners' brief:

The ordinance has no penal provisions pertinent here. It does not declare that the failure of a city employee to take the prescribed oath shall be a public offense or cause for his dismissal, nor that any employee shall be discharged for his failure to take the prescribed oath, nor does it attempt to mandate or prejudge those questions.

While in our view the validity of the ordinance does not depend to any degree upon the existence of Charter Section 432 (see p. 8, this brief) the existence of that Charter section and of the requirement contained therein, since the year 1941, is itself a complete and separate answer to the petitioners' complaint that the ordinance imposes a retroactive duty upon them. The duty upon the petitioners, during the five years preceding December 5, 1948, not to advocate forcible revolution and not know-

ingly to belong to any organization which did advocate forcible revolution, was a duty imposed upon them by their citizenship, by any traditional oath of office that they might have taken (there is no negation of such in the record), and if need be, by the provisions of the Smith Act (Title 18, U. S. Code, Sec. 2385) and the California Syndicalism and Sabotage Act (Stats. of Calif., 1919, p. 281, Appendix VII, p. 11), whether or not there had been any Section 432. But in addition, Section 432 separately imposed such a duty upon the petitioners, if they were working for the City of Los Angeles during that period, or as to those who were first employed by the City, subsequent to December 4, 1943. Section 432 set up such duty as a prerequisite condition and qualification to such employment.

If it were the fact that any of them advocated forcible revolution or belonged to any organization which advocated forcible revolution during that five-year period, he might have been discharged for cause for disobedience of that Section, whether or not Ordinance 94,004 had ever been adopted. As to those who became employees of the city during that five-year period, their appointments might have been refused or they might have been discharged thereafter if it appeared that they were not in compliance with Charter Section 432 during that period.

There is thus no opportunity whatever for the petitioners to claim, if any such valid claim could be made, that a new condition of employment was imposed upon them by the retrospective provision of the oath provided by the ordinance.

Aside from all of this, however, the people of the City would clearly be entitled to require of their servants as an absolute condition and qualification to their continued employment, not only a promise of future allegiance but a

showing of past allegiance as well, as a guarantee of future action. Indeed, on page 12 of their petition, the petitioners concede as much. And such a condition could validly be imposed retroactively.[15]

The only other possible approach remaining to the petitioners, again an inadmissible one, is that the required oath compels them to deny overt advocacies and affiliations toward forcible revolution during that five-year period and their complaint must be this: assuming that any one of them had engaged in such overt advocacies or affiliations during the five-year period, he could not truthfully disavow it, and was thus placed in a position where his failure and refusal to take the oath became a possible cause for his discharge where without the oath he might have rested in his postion until the City charged him directly with overt advocacies or affiliations and discharged him for such cause. The questions thus sought to be presented are these:

> (1) Did the oath requirement unlawfully compel the petitioners to testify against themselves in violation of the Fifth Amendment?
>
> (2) Was the oath requirement, as applied to the petitioners, a bill of attainder or *ex post facto* law in contravention of Article I, Section 10 of the Constitution?

These questions will be discussed separately.

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[15]See *Hawker v. New York*, 170 U. S. 189 (42 L. Ed. 1002); *Dent v. West Virginia*, 129 U. S. 114 (32 L. Ed. 623); *Cantelise v. McClellan*, 282 N. Y. 166 (25 N. E. 2d 972); *Crampton v. O'Mara*, 193 Ind. 551 (139 N. E. 360) (appeal dismissed, 267 U. S. 575 [69 L. Ed. 795]). *Cf. Myers v. United States*, 272 U. S. 52 (71 L. Ed. 160).

1. The Oath Requirement Did Not Compel the Petitioners to Testify Against Themselves, and in Any Event, No Provision of the Constitution Prohibits Such State Action as That Here Under Consideration.

(a) The ordinance is not criminal or penal in its nature, contains no provision for the punishment of any person who fails to comply with its oath requirements, and is not supported by any compulsion provided in any other statute or ordinance. The petitioners were free to take the oath, or not to take it, as they might be advised. Consequently, no constitutional inhibition against compulsory incrimination could have any application to them. This proposition is well established in California law, and the point is one to be determined according to California law. (*Christal v. Police Commission*, 33 Cal. App. 2d 564 (92 Pac. 2d 416) (hearing by Supreme Court of California denied p. 573).)[16]

(b) The provision of the Fifth Amendment that no person "shall be compelled in any criminal case to be a witness against himself" applies only to the federal government and does not constitute a limitation upon state action under the provisions of the Fourteenth Amendment, except where self incriminating testimony is compelled by torture, exhaustion, or the like, or where the circumstances are otherwise such that this court must conclude that the

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[16]The privilege against self-incrimination is as broad as the compulsion to testify and no broader. *May v. U. S.*, 175 F. 2d 994 (cert. denied 338 U. S. 830, 882 [94 L. Ed. 505, 542]), *Heike v. U. S.*, 227 U. S. 131 [57 L. Ed. 450].

prisoner's liberty was thus taken from him without due process of law.

Adamson v. California, 332 U. S. 46 (91 L. Ed. 1903);

Snyder v. Mass., 291 U. S. 97, 105 (78 L. Ed. 674, 678);

Twining v. New Jersey, 211 U. S. 78 (53 L. Ed. 97).

Compare:

Quicksall v. Michigan, 339 U. S. 660 (94 L. Ed. 1188);

Wolf v. Colorado, 338 U. S. 25 (93 L. Ed. 1782);

Bute v. Illinois, 333 U. S. 640 (92 L. Ed. 986);

Hamilton v. University of California, 293 U. S. 245, 261 (79 L. Ed. 343, 351);

Powell v. Alabama, 287 U. S. 45, 77 L. Ed. 158.

2. The Oath Requirement Does Not, Either on Its Face or as Applied Here, Constitute a Bill of Attainder or an Ex Post Facto Law in Contravention of Article I, Section 10 of the Constitution.

The petitioners' historical discussion points up the reasons for the constitutional prohibition of bills of attainder and in large measure establishes their definition. As stated by the petitioners, bills of attainder deny due process, deny equal protection under the laws and the right of jury trial, substitute the inquisitorial system for the accusatorial system and arbitrarily impose judgment or penalty, and as the petitioners also point out, the root of all of these objections to bills of attainder is that they are contrary to the fundamental principle of separation of powers.

When the oath requirement is examined, both on its face and in its application here, it is clear that it has none of these characteristics. As heretofore pointed out, the requirements of due process are not applicable in a governmental employment situation and neither the petitioners nor anyone else would suggest that public employees are entitled to a trial by jury or to a trial in court before they may be dismissed. There is here no violation of the equal protection principle, because the foundation of the action taken with respect to the petitioners rests upon a valid classification. The ordinance does not provide for or impose any punishment or penalty; the petitioners' discharges were effected by administrative authority, and not by the ordinance. Finally, in the effectuation of these discharges, the legislative body played no part; the discharges were effected by administrative officials and were reviewed by a quasi-judicial local board, pursuant to the provisions of the applicable general statute (Charter, Section 112(a)).

But the innuendo of the petitioners' argument still remaining is that the ordinance in effect substitutes the inquisitorial system for the accusatorial system, contrary to our traditions and beliefs. No such complaint may validly be made unless it depends upon a general principle which would be applicable in other situations, and any such general principle would have to be this: the people may not inquire of their employees concerning such matters of cause for discharge or qualification for continued employment as the people deem relevant. Instead, a definitive statute or regulation must be promulgated declaring and defining the things which will constitute disqualification, and thereafter, to effect the discharge of one of their employees, the people must accuse him and prove their case against him as if he were a defendant in a criminal case.

Indeeed the petitioners' argument goes even further, to the contention that past conduct is not a matter of relevant interest in such cases.

If the absence of authority or precedent for these claims were not enough to answer them, reason alone is—their mere statement demonstrates their invalidity.

The petitioners also complain that the ordinance in its operation effects their perpetual exclusion. This is not true if they withheld execution of the oath because of some philosophic misconception, although they might truthfully have taken it. If there be such among them, nothing in the Charter or ordinances of the City will prevent such a one from being reappointed to a position in the City's service upon his attaining a place on a competitive list, and upon his execution of the required oath and affidavit. On the other hand, if there be any among them who could not truthfully take the oath, he is, of course, hereafter, under Charter Section 432, perpetually excluded from City employment. No constitutional question arises from this situation, however, since the difference in the treatment of such person and others not so disqualified arises from the appropriate classification contained in Section 432, and is based upon a completely relevant proposition: that the people of the City of Los Angeles are not willing to employ in their service any person who has violated his allegiance to the United States by advocating the forcible overthrow of the government or by belonging to organizations which are engaged in such activities. The determination of such matters is for the states and for the legislative bodies.

Re Summers, 325 U. S. 561 (89 L. Ed. 1795);
Cohen v. Wright, 22 Cal. 293;
Ex parte Yale, 24 Cal. 241.

We find nothing in *Cummings v. Missouri*, 4 Wall. (U. S.) 277 (18 L. Ed. 356), or *Ex parte Garland*, 4 Wall. (U. S.) 333 (18 L. Ed. 366), upon which the petitioners rely so heavily, which at all supports the petitioners' contentions. Those cases involved the desire of a priest to carry on his ministry and the desire of a lawyer to practice his profession. Neither of them involved the right of the people of a state to determine for themselves the qualifications of their own employees. As always, the general expressions of those cases must be limited to the facts before the Court, and as this Court pointed out in *Dent v. West Virginia*, 129 U. S. 114 (32 L. Ed. 623), and *Hawker v. New York*, 170 U. S. 189 (42 L. Ed. 1002), the basis of the decisions in *Cummings* and *Garland* was that in the provisions of qualification many things required were wholly irrelevant to the matters involved.

United States v. Lovett, 328 U. S. 303 (90 L. Ed. 1252), involved a legislative perpetual exclusion of named persons and the majority there thought that the statute therefore came within the prohibition of bills of attainder. Here there is classification, accusation, quasi judicial hearing and determination. In *Lovett* there were none of those.

With respect to this bill of attainder contention, the following language of the Court in *Cummings v. Missouri*, 4 Wall. (U. S.) 277 (71 L. Ed. 356), is apposite since it makes it very clear that this Court would not have struck down the oath there if the requirement had been narrowly drawn as a means of ascertaining whether or not the persons affected were qualified only for public office or for professions licensed by the State. The Court said there, at page 320.

"The oath could not, therefore, have been required as a means of ascertaining whether parties were quali-

fied or not for their respective callings or the trusts with which they were charged."

Although the petitioners have never claimed that they were ignorant of the ordinance directive, or that they lacked reasonable opportunity to comply with it, we may well notice that the record shows a vigilant determination by the appointing officers that the effect of the directive should work no unfairness upon the ignorant or uninformed or upon any who might misunderstand it, and that each of the petitioners was specifically advised of the directive. [R. 3-4.]

C. THE CONSTITUTION DOES NOT FORBID A REQUIREMENT BY THE PEOPLE OF A STATE THAT THEIR EMPLOYEES DISCLOSE INFORMATION RELEVANT TO THEIR EMPLOYMENT. WHERE THE LEGISLATIVE BODY REQUIRES THE DISCLOSURE OF SPECIFIED INFORMATION, THE INTENDMENTS OF SUCH LEGISLATION ESTABLISH THE RELEVANCY OF THE INFORMATION REQUESTED, UNLESS IT APPEARS ON THE FACE OF THE STATUTE NOT TO BE AT ALL RELEVANT, AND OTHERWISE THE PRESUMPTION OF THE STATUTE MUST STAND UNLESS THERE IS PLEADING AND PROOF THAT THE INFORMATION REQUESTED IS WHOLLY IRRELEVANT.

We are here concerned with the city's right to inquire as to the membership of its employees in two named organizations only—the Communist Party of the United States and the Communist Political Association. The principle involved, however, is no different than would be the case if the inquiry were as to membership in the Ku Klux Klan or in the Mafia.

By such an inquiry the people seek information. By their implied legislative determination that such information is relevant to an employee's character, capacity, or eligibility, such relevancy is established in the absence of contrary evidence. (*Gitlow v. New York*, 268 U. S. 652, 668, 671 (69 L. Ed. 1138, 1146, 1148.)

The petitioners' contention seems to be that the public cannot inquire as to its servants' membership in any organization unless in response to an attack upon such inquiry the people plead and prove complete and ultimate justification for their interest.

Clearly, the burden here sought to be fastened upon the people is placed instead upon the appellants: had they shown irrefutably before the Civil Service Commission that the Communist Party of the United States and the Communist Political Association are organizations of a genuinely political character, whose books, records and membership are freely open to all interested and whose purposes and methods are lawful, they would no doubt have been able to state a case in the state court. Such was not done or attempted; no allegations to such effect were made to the state court, and consequently the petitioners' petition was properly denied.

Without at all admitting that the people have a right to expect allegiance to their government from their own employees the petitioners apparently seek to manufacture an exception from this principle of legislative intendment on the basis of the nomenclature of the organizations here in question. Because the Communist Party of the United States of America calls itself a party, they say, it must be a political party, comparable in all significant ways with the Republican Party, the Democratic Party, the Socialist

Party and the like. Because the Communist Political Association calls itself a political association, they say, it must perforce be a political association comparable in all material respects with, say, the Young Republicans or the Young Democrats.

Was the trial court entitled, or is this Court empowered, to reach such conclusions as to the Communist Party of the United States or as to the Communist Political Association? To suggest such a proposition is to ask that the courts close their eyes and ears. That these two organizations are the opposite of these things we do not ask the court to find as a matter of law—such findings have been made and we make bold to say will be made again in appropriate forums when this proposition is properly placed in issue—but neither does it follow at all from mere assertion that the affirmative of this proposition is true. That the contrary is asserted by the highest officers of the United States is well known to the Court. And the Court is likewise aware that perhaps the larger body of the public opinion commonly accepts the proposition that these organizations are in fact conspiratorial, subversive, and treasonable in their nature. That these propositions are denied by some spokesmen for these organizations merely takes them out of the field of judicial notice but by no means establishes the contrary as the truth.[17] But the petitioners must contend that it is an

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[17] *Cf. Communist Party v. Peek*, 20 Cal. 2d 536 (127 P. 2d 889); *American Communications Assn. v. Douds*, 339 U. S. 382, (94 L. Ed. 925); *Osman v. Douds*, 339 U. S. 846 (94 L. Ed. 1328); *Schneiderman v. U. S.*, 320 U. S. 118 (87 L. Ed. 1796); *Barsky v. U. S.*, 167 F. 2d 241 (cert. den. 334 U. S. 843) (92 L. Ed. 1767); *Dunne v. U. S.*, 138 F. 2d 137 [cert. den. 320 U. S. 790 (88 L. Ed. 476)]; *People v. Stevlik*, 187 Cal. 361 (203 Pac. 78). And see *U. S. v. Dennis*, 183 F. 2d 201 (cert. granted, 10/23/50 [95 L. Ed. Adv. Op. 43]).

accepted proposition, established beyond refutation, that the Communist Party and the Communist Political Association are lawful organizations, with lawful objectives proposed to be accomplished by lawful means. To ask this Court to acknowledge such to be the facts is to ask this Court to establish a new rule of judicial notice—that nomenclature and denomination establish the facts connoted. Indeed, it is to ask for more than that, for if a fact is the subject of judicial notice it cannot be impeached even by evidence proposed to be offered, and thus the petitioners are asking this Court to adjudge, without evidence, that these are lawful organizations.

Only by substantiating the propositions thus stated can the petitioners hope to succeed in their challenge of the affidavit provisions of the ordinance. Lacking such substantiation, the attack must fail, for these provisions are then seen to be what in fact they are—provisions for an inquiry by the people into the activities of their employees which possibly, if not probably, are directed at the continued existence of the United States itself. Could any consideration be more relevant to eligibility for public employment?

Such inquiries with respect to the people's employees are even more requisite than inquiries into such activities by persons outside of governmental administration. And as the Court said in *Barsky v. United States*, 167 F. 2d 241 at 246 [Certiorari denied, 334 U. S. 843 (92 L. Ed. 1767)]:

"This existing machinery of government has power to inquire into potential threats to itself, not alone for the selfish reason of self-protection, but for the basic reason that having been established by the people as an instrumentality for the protection of the rights of people, it has an obligation to its creators to preserve itself . . ."

Nor is government required to delay inquiry until the danger of its overthrow by force is clear and present. In the *Barsky* case *(supra)*, the Court expressed its views on this point as follows (pp. 246, 247):

". . . We are referred to the 'clear and present danger' rule expressed by Mr. Justice Holmes in *Schenck v. United States* and extending through the line of cases cited and discussed in *Bridges v. State of California*. But all those cases dealt with statutes which actually imposed a restriction upon speech or publication. In our view, it would be sheer folly as a matter of governmental policy for an existing government to refrain from inquiry into potential threats to its existence or security until danger was clear and present. And for the judicial branch of government to hold the legislative branch to be without power to make such inquiry until the danger is clear and present, would be absurd. How, except upon inquiry, would the Congress know whether the danger is clear and present?"

It should be noted, also, in connection with the petitioners' somewhat obscure contention that the affidavit

requirement constitutes a bill of attainder, that it not only implements Charter Section 432, but that it also implements Section 1028 of the California Government Code. (Appendix V, p. 10.)

Here the argument is that the affidavit requirement singles out members of the Communist Party and the Communist Political Association and seeks to punish such members or to deprive them of their jobs.

Inasmuch as the oath prescribed and required by Sections 1 and 2 of the ordinance specifies neither the Communist Party nor any other by name, but is directed only at organizations advocating the forcible overthrow of the government, the petitioners' argument apparently assumes that the Communist Party is one which engages in such advocacy. If such be the fact, its members' claims to city employment are not, as we have shown, protected by the Constitution. Sections 3 and 4 of the ordinance require each employee to execute an affidavit stating whether he is or ever was a member of the Communist Party of the United States or the Communist Political Association, but the ordinance contains no provision requiring the removal of an employee who answers in the affirmative. The petitioners were discharged only for their refusal to take the oath or execute the affidavit, and then only after a hearing before the Board of Civil Service Commissioners as provided in the City Charter. It is clear, therefore, that the cases cited by the petitioners have no application to the facts of this case.

POINT IV.

The Petitioners' Briefs and Petition.

The petitioners' authorities, so far as seems necessary, have been considered, with the following exceptions:

In support of their petition for certiorari the petitioners pointed to the grant of certiorari in *Steiner v. Darby*, 337 U. S. 929 (93 L. Ed. 1737) [88 Cal. App. 2d 481 (199 P. 2d 429)], and to the opinion of this Court dismissing that proceeding (338 U. S. 327 (94 L. Ed. 144)), in which reference was made to *Communist Party v. Peek*, 20 Cal. 2d 536 (127 P. 2d 889), and to *James v. Marinship Corporation*, 25 Cal. 2d 721 (155 P. 2d 329). Nothing in those decisions supports the position of the petitioners here.

The petitioners also suggest an inconsistency between the decision of the state courts here and the decisions in *Danskin v. San Diego*, 28 Cal. 2d 536 (171 P. 2d 885), and *Tolman v. Underhill*, ... A. C. A. .... (.... P. 2d ....).

In the *Danskin* case the court reached a conclusion similar to that reached by this Court in *DeJonge v. Oregon*, 299 U. S. 353 (81 L. Ed. 278). The question involved was whether or not a group of persons had a right to use a public auditorium for a lawful purpose on the same basis as other groups might use it, if such organization otherwise had unlawful purposes. The Supreme Court of California said that it did, upon the same principle that this Court held in *DeJonge*, that the petitioner could not be punished for attending an open meeting of an organization which had unlawful aims, where such meeting was itself in all respects peaceable and did not involve any unlawful activity. While the language of the *Danskin*

opinion seems to go too far and not to have been required by the case before the court, the conclusion reached conflicts not at all with the state action here presented. The court simply held that the fact that one belongs to an organization which advocates forcible revolution was irrelevant to his entitlement to use a public auditorium, for lawful purposes. So, such membership would be irrelevant to a citizen's right to receive protection from the fire department, but the case here presented is whether or not such a one is entitled under the Constitution to occupy a position in the service of the people whose government he proposes to overthrow.

In *Communist Party v. Peek, supra,* the decision was based upon a corrollary of the proposition for which we have contended here under Point III-C.

James v. Marinship Corporation, supra, did not involve any questions of state action or of the powers of the people of California under the Constitution to insure that their employees would serve them faithfully, but rather only the question of whether or not a closed shop might be enforced by a labor union where it arbitrarily closed or partially closed membership in the union to members of the negro race.

Toliman v. Underhill, supra, is of course not final, and we apprehend that it is not unlikely that a hearing will be granted by the Supreme Court of California. It seems to us that the decision probably conflicts with the decision of the District Court of Appeal here [R. 40-46], with the decision of the District Court of Appeal in *Steiner v. Darby, supra,* and with a number of decisions of the California Appellate Courts, including *Wall v. Board of Regents,* 38 Cal. App. 2d 698 (102 P. 2d 533),

Technically, of course, the *Tolman* decision is of no relevancy here: if there is a conflict between it and those other state decisions it is for California and not for this Court to resolve that conflict. Furthermore, the basis of the *Tolman* opinion is not the Federal Constitution, but rather two provisions of the California Constitution—one of which provides for the government of the University of California, and the other of which provides an exclusive oath for officers of the State. Consequently, the grounds of the decision are purely state grounds and they further obviously could have no pertinency here—the petitioners were not officers of the State of California.

Schneiderman v. United States, 320 U. S. 118 (87 L. Ed. 1796), involved neither criminal sanctions nor a test for public employment, but only the narrow question of whether or not the government had established fraud in the inception of Schneiderman's naturalization. The majority of this Court thought there that the government had failed to sustain the heavy burden of proving by "clear, unequivocal and convincing evidence" that Schneiderman advocated revolutionary change by force and violence. Neither the judgment nor the opinion of the court established the proposition that one has a constitutional right to advocate violent revolution, whether or not the execution of his proposal is to be deferred to a future date. On the contrary this Court's determination was expressly based upon the proposition (p. 146 (87 L. Ed. 1813)) that the record failed to establish that Schneiderman believed in and advocated the employment of force and

violence, instead of peaceable persuasion, as a means of attaining political ends, or that his "beliefs on the subject of force and violence were such that he was not attached to the Constitution" at the time of his naturalization.[18]

The petitioners seize upon passages from our brief in opposition to certiorari and attempt to build an argument favorable to them of administrative construction of the ordinance, based upon those passages out of context. We think it appropriate to say that whatever the rule may be in other states, counsel for the respondent City of Los Angeles have no authority to affect the power of the legislative body or to change the effect of legislative acts or otherwise to intrude on the legislative function. The passages in our brief in opposition (pp. 15, 20, 21) to which counsel refers, do not, of course, admit of the construction sought to be placed upon them.

Nowhere does the petitioners' argument find any support, because their major premise is wrong—there is no constitutionally protected right to advocate the forcible overthrow of the existing constitutionally established government of the United States. Nowhere could it find any support, because their second premise is wrong—the power to appoint carries the power to remove (*Myers v. U. S.*, 272 U. S. 52 (71 L. Ed. 160)), and there is no vested or property right in public office.

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[18] *Cf.* The dissenting opinion of Mr. Chief Justice Stone at 320 U. S. 170 (87 L. Ed. 1826), and see also Wiener, "'Freedom For The Thought That We Hate': Is It a Principle Of The Constitution?" 37 Am. Bar Ass'n Journal, 177 (March, 1951). See also *Re Summers*, 325 U. S. 561 (89 L. Ed. 1795).

POINT V.

The Ultimate Contentions of Amicus Curiae, the American Civil Liberties Union, Are Invalid and Without Support in the Decisions of This Court.

In general the invalidity of the contentions of the *amicus curiae* has been established by the facts of the case and by our foregoing argument. However, some general observations appear to be in order and some specific reply will hereafter be made.

In its prefatory statement, referring to the ordinance and assertedly similar legislation, the *amicus* says (A. C. Br. p. 1):

> "This widespread manifestation of legislative action has aroused the interest and concern of thinking people everywhere."

And the argument thereafter, in large measure, is directed to the idea that often unwise, improvident or unjust things are done by executive or legislative authority and that, happily, appeal may successfully be made to the courts to correct such things.

The Judicial Department Is Not Concerned With Wisdom or Policy.

It is said of the ordinance that while a requirement of an oath of allegiance may well be pertinent to "policy making" or "security" positions, no real harm to the people may be foreseen should an advocate of forcible revolution continue to hold his position as street cleaner. (A. C. Br. p. 8.) It is said further that neither inquiry about nor assurance of a public employee's *past* allegiance is relevant, since a man may come no longer to advocate

forcible revolution and as a result lose his "initial disqualification to participate in the deliberations, activities or fruits of Democratic Government." (A. C. Br. p. 9.) And finally, the *amicus* argues, in effect, that even if there be no actual infraction of constitutional rights, the ordinance is reminiscent of test oaths and witch hunt persecutions in the past and symptomatic of anticipated future requirements for social, economic, political and religious orthodoxy. (A. C. Br. pp. 15-16.)

The essential contentions implicit in this phase of the argument of the *amicus* have been time and again conclusively rejected by this Court,[19] but their insistent reiteration suggests some further reply.

Widespread concern with manifestations of legislative action or with manifestations of executive action is in no way novel, but this concern cannot well be abated by judicial correction of the other branches of government. In addition to the objections many times expressed by this Court it may be further noted that there is frequent widespread concern with manifestations of judicial action. Legislative representatives of the people, officers of the executive department, government lawyers, administrative personnel and large sections of the public are frequently reminded of the dangers and abuses inherent in proposals for judicial supremacy. Trial courts in various jurisdictions often still undertake to correct what they deem to be legislative or executive unwisdom, by stepping into the shoes of highway commissions, personnel boards, park departments, health officers, and legislative bodies and by directing the construction of roads, writing civil service examinations, selecting sites for improvements, writing

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[19]See this brief, Point III.

sanitary regulations, revising the tax laws and the like. Fortunately, under the leadership of this Court, the appellate courts throughout the nation have for the most part struck down such judicial trespasses. The general argument of the *amicus* urges that this Court reject those precedents, and by the enunciation of new principles applicable here and extendible elsewhere, establish the judiciary as a censor of the policies and wisdom of the other two departments of the government.

The Court Is Not Concerned With the Administrative Operations of the State.

There is no constitutional basis for the suggestion that questions relative to the administrative operations of the states, such as the appointment or dismissal of state employees, is of concern to this Court, nor has the proposition been successfully disputed in any court, that the power of appointment carries with it the power of discharge, except as it may be, and only to the extent that it is, limited by the very authority which delegated the power of appointment. The decisions cited by the *amicus* under its Point II in no instance support any contrary proposition and the state cases cited are irrelevant, since they merely concern questions of the interpretation of the state statutes which created and also restricted the appointing or discharging power.

To contend, as does the *amicus*, that any state action relating to the employees of the state is subject to "strict scrutiny" to determine whether its effect, "directly or indirectly" is to deprive or limit any basic freedom (A. C. Br. p. 6), is to ask a total abandonment by this Court of the established principles heretofore stated under our Point III.

The Contentions of the Amicus Must Fail for Like Vulnerability With Those of the Petitioners.

In our view, the brief of *amicus* frankly reaches the ultimate conclusion of its generalized argument, that there is some sort of a right, even though limitable, to advocate forcible revolution and even at the same time to occupy a position in the service of the people, for it is proposed that an oath of allegiance as a prerequisite to public employment cannot stand unless the people can affirmatively show that the employment by them of a few or all of those persons who advocate forcible revolution would constitute a clear and present danger. (A. C. Br. p. 10.)

Finally, the *amicus* misreads the ordinance and ignores the City's Charter. (A. C. Br. pp. 7-9, 11, 13.) The ordinance does not inquire of "attitudes," "views," or "opinions," nor does it require a disavowal of membership in any organization which "might become" or "sometime in the future" will be engaged in the advocacy of forcible revolution; and the Charter forbids a final discharge of a classified employee at the sole discretion of any official, but instead insures that no such dismissal, under the ordinance or otherwise, shall stand, against appeal, unless the City's Civil Service Commission is satisfied after a full hearing that the cause stated was sufficient and that it was supported by the facts. This should make it clear that the ordinance does not, as claimed, "in its very nature" call for any sanction whatever. (A. C. Br. p. 13.) The decision of sanction must first be made by the appointing authority and it must be sustained by the Civil Service Commission. These Charter provisions, in our view, are by no means compelled by the Constitution. We point them up here only that the Court may not be misinformed.

Conclusion.

It is respectfully submitted that there is no conflict between any provision of the Constitution of the United States and the decisions here of the Board of Civil Service Commissioners of the City of Los Angeles, and the courts of California.

It follows that the decisions and judgments of the courts below should be affirmed.

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APPENDIX.

I.

SECTION 80 OF THE CHARTER OF THE CITY OF LOS ANGELES.

(Statutes of California 1925, page 1058)

"Subject to the provisions of this charter, the rules of the department and the instruction of his board, said general manager shall have the power and duty:

(1) To administer the affairs of the department as its chief administrative officer;

(2) To appoint, discharge, suspend, or transfer the employees of the department, * * * and to issue instructions to said employees, * * * in the line of their duties, all subject to the Civil Service provisions of the charter;

* * * * * * * * * *

II.

SECTION 112(a) OF THE CHARTER OF THE CITY OF LOS ANGELES.

(Statutes of California 1945, page 3102)

"Any board or officer having the power of appointment of officers, members and employees in any department of the government of the city shall have the power to remove, discharge or suspend any officer, member or employee of such department; but no person in the classified civil service of the city, other than an unskilled laborer employed by the day, shall be removed, discharged or sus-

pended except for cause, which shall be stated in writing by the board or officer having the power to make such removal, discharge or suspension, and filed with the Board of Civil Service Commissioners, with certification that a copy of such statement has been served upon the person so removed, discharged or suspended, personally, or by leaving a copy thereof at his last known place of residence if he cannot be found. Upon such filing such removal, discharge or suspension shall take effect. Within fifteen days after such statement shall have been filed, the said board, upon its own motion, may, or upon written application of the person so removed, discharged or suspended, filed with said board within five days after service upon him of such statement, shall proceed to investigate the grounds for such removal, discharge or suspension. If after such investigation said board finds, in writing, that the grounds stated for such removal, discharge or suspension were insufficient or were not sustained, and also finds in writing that the person removed, discharged or suspended is a fit and suitable person to fill the position from which he was removed, discharged or suspended, said board shall order said person so removed, discharged or suspended to be reinstated or restored to duty. The order of said board with respect to such removal, discharge or suspension shall be forthwith certified to the appointing board or officer, and shall be final and conclusive; provided, that the order of any appointing board or officer suspending any person because of lack of funds in such department shall be final, and shall not be subject to review by said Board of Civil Service Commissioners. If the Board of Civil Service Commissioners shall order that any person removed, discharged or suspended under the provisions of this section be reinstated or restored as

above provided, the person so removed, discharged or suspended shall be entitled to receive compensation from the city the same as if he had not been removed, discharged or suspended by the appointing board or officer."

III.

Ordinance No. 94,004.

An Ordinance to effectuate the provisions of Charter Section 432 and otherwise to insure the loyalty of the officers and employees of this City.

The People of the City of Los Angeles Do Ordain As Follows:

Section 1. Every person who is hereafter elected or appointed to an office or position in the service of the City of Los Angeles must, before entering upon the duties of his office or position, take and subscribe to the following oath:

I, ..., do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America and the State of California, and will support and defend the Constitution and laws of the United States of America and of the State of California and the laws of the City of Los Angeles against all enemies, foreign and domestic. I further swear (or affirm) that I do not advise, advocate or teach, and have not within the period beginning five (5) years prior to the effective date of the ordinance requiring the making of this oath or affirmation, advised, advocated or taught, the overthrow by force, violence or other unlawful means, of the Government of the United States of America or of the State of California and that I am not now and have not, within said period, been or become

a member of or affiliated with any group, society, association, organization or party which advises, advocates or teaches, or has, within said period, advised, advocated or taught, the overthrow by force, violence or other unlawful means of the Government of the United States of America, or of the State of California. I further swear (or affirm) that I will not, while I am in the service of the City of Los Angeles, advise, advocate or teach, or be or become a member of or affiliated with any group, association, society, organization or party which advises, advocates or teaches, or has within said period, advised, advocated or taught, the overthrow by force, violence or other unlawful means, of the Government of the United States of America or of the State of California, that I will well and faithfully discharge the duties of my office or employment in the service of the City of Los Angeles and that I take this whole obligation freely without any mental reservation or purpose of evasion, So Help Me God.

Sec. 2. Every person who now holds or occupies an office or position in the service of the City of Los Angeles must, within thirty (30) days after the effective date of this ordinance, or if he be on leave or under suspension for cause from the service of the city at such effective date, within thirty (30) days after his return to such service, take and subscribe to the oath set forth in Section 1 hereof.

Sec. 3. Every person who is hereafter elected or appointed to an office or position in the service of the City of Los Angeles must, before entering upon the duties of his office or position, execute an affidavit stating whether or not he is or ever was a member of the Communist Party of the United States of America or of the Communist Political Association, and if he is or was such a member, stating

the dates when he became, and the periods during which he was, such a member; provided, however, that no additional affidavit shall be required on account of the transfer, demotion or promotion of any person who has once executed an affidavit under this section or under Section 4 hereof.

Sec. 4. Every person who now holds or occupies an office or position in the service of the City of Los Angeles must, within thirty (30) days after the effective date of this ordinance, or if he be on leave or under suspension for cause from the service of the city at such effective date, within thirty (30) days after his return to such service, execute an affidavit stating the facts required to be stated in the affidavit required by Section 3 of this ordinance.

Sec. 5. Each oath and affidavit required hereunder shall be taken, executed and signed before an officer authorized by law to administer oaths, and the jurat of such officer shall be affixed to the document so subscribed under the official seal of such officer. No officer or employee of the city shall require or receive the payment of any fee for administering any oath or affirmation provided for herein.

Sec. 6. The form of the affidavit required by Sections 3 and 4 hereof shall be prepared by the City Clerk. The City Clerk shall secure and maintain a supply of printed forms of the said affidavit and of the oath required by Sections 1 and 2 hereof, and shall furnish such forms as may be necessary to officers and employees of the city, to the Board of Civil Service Commissioners and to the heads of the departments of the city.

Sec. 7. The oaths and affidavits required hereby to be executed by officers and employees of the city who are appointed or employed under the provisions of Article IX of the City Charter shall be filed with the Board of Civil Service Commissioners and shall be a part of the officer's

or employee's personnel record on file with the said board. All other oaths and affidavits required hereunder shall be filed with the City Clerk.

Sec. 8. It shall be the duty of each appointing power to require each officer or employee to execute and file an oath and affidavit as required hereby.

* * * * * * * * *

IV.

An act to add Chapter 8 to Division 4, Title 1, of the Government Code, relating to an oath or affirmation of allegiance for civil defense workers and public employees, declaring the urgency thereof, to take effect immediately.

The people of the State of California do enact as follows:

SECTION 1. Chapter 8 is added to Division 4, Title 1 of the Government Code, to read:

CHAPTER 8. OATH OR AFFIRMATION OF ALLEGIANCE FOR CIVIL DEFENSE WORKERS AND PUBLIC EMPLOYEES.

3100. It is hereby declared that the defense of the civil population during the present state of world affairs is of paramount state importance requiring the undivided attention and best efforts of our citizens. In furtherance of such defense and in the exercise of police power of the State in protection of its citizens, all public employees are hereby declared to be civil defense workers subject to such civilian defense activities as may be assigned to them by their superiors or by law.

3101. For the purpose of this chapter the term "civil defense worker" includes all public employees and all volunteers in any civilian defense organization accredited by the State Disaster Council. The term "public employees" includes all persons employed by the State or any county, city, city and county, state agency or public district, excluding aliens legally employed.

3102. Subject to the provisions of Section 3 of Article XX of the Constitution, all civil defense workers shall within the first 30 days of employment take and subscribe to the oath or affirmation required by this chapter.

3103. The oath or affirmation required by this chapter is as follows:

"I, ..., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

"And I do further swear (or affirm) that I do not advocate, nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means; that within the five years immediately preceding the taking of this oath (or affirmation) I have not been a member of any party or organization, political or otherwise, that advocated the overthrow of the Government of

the United States or of the State of California by force or violence or other unlawful means except as follows:

.....

.....

(If no affiliations, write in the words, 'No Exceptions')

and that during such time as I am a member or employee of the.....I will not advocate nor become a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means."

(name of public agency)

3104. The oath or affirmation may be taken before any officer authorized to administer oaths.

No fee shall be charged by any person before whom the oath or affirmation is taken and subscribed.

3105. The oath or affirmation of any civil defense worker of the State shall be filed with the State Personnel Board within 30 days of the date on which it is taken and subscribed.

The oath or affirmation of any civil defense worker of any county shall be filed in the office of the county clerk of the county.

The oath or affirmation of any civil defense worker of any city shall be filed in the office of the city clerk of the city.

The oath or affirmation of any civil defense worker of any other agency or district shall be filed with such officer or employee of the agency or district as may be designated by such agency or district.

3106. Compliance with this chapter shall, as to state employees, be deemed full compliance with Chapter 4,

Part 1, Division 5, Title 2 of this code, requiring taking of oaths by state employees.

3107. No compensation nor reimbursement for expenses incurred shall be paid to any civil defense worker by any public agency unless such civil defense worker has taken and subscribed to the oath or affirmation required by this chapter. It shall be the duty of the person certifying to public pay rolls to ascertain and certify that such civil defense worker has taken such oath or affirmation.

3108. Every person who, while taking and subscribing to the oath or affirmation required by this chapter, states as true any material matter which he knows to be false, is guilty of perjury, and is punishable by imprisonment in the state prison not less than one nor more than 14 years.

3109. Every person having taken and subscribed to the oath or affirmation required by this chapter, who while in the employ of, or service with, the State or any county, city, city and county, state agency, public district, or civilian defense organization advocates or becomes a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States by force or violence or other unlawful means, is guilty of a felony, and is punishable by imprisonment in the state prison not less than one or more than 14 years.

Sec. 2. Subject to the provisions of Section 3 of Article XX of the Constitution, all persons designated in Chapter 8, Division 4, Title 1, of the Government Code as civil defense workers, on the effective date of this act shall, within 30 days, take and subscribe to the oath or affirmation required by Chapter 8, Division 4, Title 1,

of the Government Code. Any public employee who is on authorized leave on the thirtieth day after the effective date of this act shall take and subscribe said oath or affirmation within 30 days of his return to work.

Sec. 3. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 4. This act is an urgency measure necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

During the present emergency in world affairs loyalty and allegiance to the United States and the principles for which it stands are of utmost importance. Immediate assurance that persons in civil defense are loyal to this government and are not in fact advocates of its overthrow by force or violence is essential to the well-being of the State and Nation and the confidence of the people. It is therefore necessary that this act take effect immediately.

V.

GOVERNMENT CODE OF CALIFORNIA, SECTION 1028.

"Sec. 1028. *Advocating overthrow of government cause for dismissal.* It shall be sufficient cause for the dismissal of any public employees including teachers in the public schools or any state supported educational institution when such public employee or teacher advocates or is a

member of an organization which advocates overthrow of the Government of the United States or of the State, by force, violence, or other unlawful means." [Stats. 1947, ch. 1418, sec. 1.]

VI.

Military and Veterans Code of California, Sec. 616.

"Sec. 616. *Display of emblem of opposition to organized government.* Any person who displays a red flag, banner, or badge or any flag, badge, banner, or device of any color or form whatever in any public place or in any meeting place or public assembly, or from or on any house, building, or window as a sign, symbol, or emblem of forceful or violent opposition to organized government or as an invitation or stimulus to anarchistic action or as aid to propaganda that advocates by force or violence the overthrow of government is guilty of a felony." [Stats. 1935, page 378.]

VII.

Act 8428. California Syndicalism and Sabotage Law.

(Statutes of California 1919, page 281)

"An act defining criminal syndicalism and sabotage, prescribing certain acts and methods in connection therewith and in pursuance thereof and providing penalties and punishments therefor.

"Section 1. *'Criminal syndicalism' defined.* The term 'criminal syndicalism' as used in this act is hereby de-

fined as any doctrine or precept advocating, teaching or aiding and abetting the commission of crime, sabotage (which word is hereby defined as meaning willful and malicious physical damage or injury to physical property), or unlawful acts of force and violence or unlawful methods of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change.

"Sec. 2. *Unlawful acts: Penalty.* Any person who: 1. By spoken or written words or personal conduct advocates, teaches or aids and abets criminal syndicalism or the duty, necessity or propriety of committing crime, sabotage, violence or any unlawful method of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change; or

"2. Willfully and deliberately by spoken or written words justifies or attempts to justify criminal syndicalism or the commission or attempt to commit crime, sabotage, violence or unlawful methods of terrorism with intent to approve, advocate or further the doctrine of criminal syndicalism; or

"3. Prints, publishes, edits, issues or circulates or publicly displays any book, paper, pamphlet, document, poster or written or printed matter in any other form, containing or carrying written or printed advocacy, teaching, or aid and abetment of, or advising, criminal syndicalism; or

"4. Organizes or assists in organizing, or is or knowingly becomes a member of, any organization, society,

group or assemblage of persons organized or assembled to advocate, teach or aid and abet criminal syndicalism; or

"5. Willfully by personal act or conduct, practices or commits any act advised, advocated, taught or aided and abetted by the doctrine or precept of criminal syndicalism, with intent to accomplish a change in industrial ownership or control, or effecting any political change;

"Is guilty of a felony and punishable by imprisonment in the state prison not less than one nor more than fourteen years.

"Sec. 3. *Constitutionality of act.* If for any reason any section, clause or provision of this act shall by any court be held unconstitutional then the legislature hereby declares that, irrespective of the unconstitutionality so determined of such section, clause or provision, it would have enacted and made the law of this state all other sections, clauses and provisions of this act.

"Sec. 4. *Urgency clause.* Inasmuch as this act concerns and is necessary to the immediate preservation of the public peace and safety, for the reason that at the present time large numbers of persons are going from place to place in this state advocating, teaching and practicing criminal syndicalism, this act shall take effect upon approval by the governor."

VIII.

TITLE 5 OF THE CORPORATIONS CODE OF THE STATE OF CALIFORNIA.

"Subversive Organization Registration Law."

"Sec. 35000. *Short title.* This title may be cited as the Subversive Organization Registration Law.

"Sec. 35001. *Purpose of title.* This title is e acted in the exercise of the police power of this State for the protection of the public peace and safety by requiring the registration of subversive organizations which are conceived and exist for the purpose of undermining and eventually destroying the democratic form of government in this State and in the United States.

"Sec. 35002. *'Subversive organization' defined.* As used in this title, 'subversive organization' means every corporation, association, society, camp, group, bund, political party, assembly, and every body or organization composed of two or more persons or members, which comes within either or both of the following descriptions:

"(a) Which directly or indirectly advocates, advises, teaches, or practices, the duty, necessity, or propriety of controlling, conducting, seizing, or overthrowing the Government of the United States, of this State, or of any political subdivision thereof by force or violence.

"(b) Which is subject to foreign control as defined in Section 35003.

* * * * * * * * *

"Sec. 35100. *Information and documents to be filed.* Every subversive organization in existence on September 13, 1941, shall within 30 days after that date, and every

subversive organization thereafter organized shall within 10 days after its organization, file with the Secretary of State, on such forms and in such detail as he may prescribe, the following information and documents:

"(a) A complete and detailed statement subscribed, under oath, by all of its officers, showing all of the following:

"(1) Its name and post-office address.

"(2) The names and addresses of all its branches, chapters, and affiliates.

"(3) The names, nationalities, and residence addresses of its officers and members, and the qualifications required for membership in it.

"(4) The nature and extent of its existing and proposed aims, purposes, and activities.

"(5) The times and places of its meetings.

* * * * * * * * *

"(b) A true copy, certified by all of its officers, of all of the following:

"(1) Its charter, article of association, or constitution, and its by-laws, rules and regulations.

"(2) Its oath, affirmation, or pledge of membership, if any.

"(3) Each agreement, resolution, and other instrument or document relating to its organization, powers, and purposes and the powers and duties of its officers and members.

"(4) Each book, pamphlet, leaflet, or other printed, written, or illustrated matter directly or indirectly issued or distributed by it or in its behalf, or to or by its members with its knowledge, consent, or approval.

* * * * * * * * *

"(c) A description of the uniforms, badges, insignia, or other means of identification prescribed by it, and worn or carried by its officers or members, or any of such officers or members.

"(d) In case it is subject to foreign control, a statement of the manner in which it is so subject.

* * * * * * * * *

"Sec. 35103. *Statement of new members.* Every subversive organization shall at least once in each period of six months file with the Secretary of State a statement subscribed under oath by all of its officers showing the names and residence addresses of all persons who have been admitted to membership during that period or, if no members have been admitted during that period, a statement to that effect similarly subscribed.

* * * * * * * * *

"Sec. 35302. *Membership in and attending meeting of organization.* Any person who becomes or remains a member of any subversive organization, or attends a meeting thereof, with knowledge that the organization has failed to comply with any provision of this title, is guilty of a misdemeanor punishable by fine of not less than ten dollars ($10) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail for not less than 10 days nor more than one year, or by both."

IX.

TITLE 18, U. S. C., SECS. 2381-2385, INC.

"Sec. 2381. *Treason.*

"Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined not less than $10,000; and shall be incapable of holding any office under the United States.

"Sec. 2382. *Misprision of treason.*

"Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined not more than $1,000, or imprisoned not more than seven years, or both.

"Sec. 2383. *Rebellion or insurrection.*

"Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States.

"Sec. 2384. *Seditious conspiracy.*

"If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof,

or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than $5,000 or imprisoned not more than six years, or both.

"Sec. 2385. *Advocating overthrow of Government.*

"Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

"Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

"Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

"Shall be fined not more than $10,000, or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction."

Service of the within and receipt of a copy thereof is hereby admitted this.....day of April, A. D. 1951.

4-19-51—30